Senate

General Assembly

File No. 632

January Session, 2003

Substitute Senate Bill No. 1035

Senate, May 5, 2003

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WHITE COLLAR CRIME ENFORCEMENT, THE CONNECTICUT UNIFORM SECURITIES ACT AND CORPORATE FRAUD ACCOUNTABILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36a-3 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

Other definitions applying to this title or to specified parts thereof and the sections in which they appear are:

"Account". Sections 36a-155 and 36a-365.

"Additional proceeds". Section 36a-746e.

"Advance fee". Sections 36a-510, 36a-485 and 36a-615.

"Advertise" or "advertisement". Sections 36a-485 and 36a-510.

"Agency bank". Section 36a-285.

"Alternative mortgage loan". Section 36a-265.

"Amount financed". Section 36a-690.
"Annual percentage rate". Section 36a-690.
"Annual percentage yield". Section 36a-316.
"Annuities". Section 36a-455a.
"Applicant". Section 36a-736.
"APR". Section 36a-746a.
"Assessment area". Section 36a-37.
"Associate". Section 36a-184.
"Associated member". Section 36a-458a.
"Bank". Section 36a-30.
"Bankers' bank". Section 36a-70, as amended by this act.
"Banking business". Section 36a-425.
"Basic services". Section 36a-437a.
"Billing cycle". Section 36a-565.
"Bona fide nonprofit organization". Section 36a-655.
"Branch". Sections 36a-145, 36a-410 and 36a-435b.
"Branch or agency net payment entitlement". Section 36a-428n.
"Branch or agency net payment obligation". Section 36a-428n.
"Broker". Section 36a-746a.
"Business and industrial development corporation". Section 36a-626.
"Business and property in this state". Section 36a-428n.
"Capital". Section 36a-435b.
"Cash advance". Section 36a-564.
"Cash price". Section 36a-770.
"Certificate of incorporation". Section 36a-435b.
"Closely related activities". Sections 36a-250 and 36a-455a.
"Collective managing agency account". Section 36a-365.
"Commercial vehicle". Section 36a-770.
"Community bank". Section 36a-70, as amended by this act.
"Community credit union". Section 36a-37.
"Community development bank". Section 36a-70, as amended by this act.
"Community reinvestment performance". Section 36a-37.
"Connecticut holding company". **[**Section**]** Sections 36a-53, as amended by this act, and 36a-410.

"Construction loan". Section 36a-458a.
"Consumer". Sections 36a-155, 36a-676 and 36a-695.
"Consumer Credit Protection Act". Section 36a-676.
"Consumer debtor" and "debtor". Sections 36a-645 and 36a-800.
"Consumer collection agency". Section 36a-800.
"Consummation". Section 36a-746a.
"Controlling interest". Section 36a-276.
"Corporate". Section 36a-435b.
"Credit". Sections 36a-645 and 36a-676.
"Credit manager". Section 36a-435b.
"Creditor". Sections 36a-676, 36a-695 and 36a-800.
"Credit card", "cardholder" and "card issuer". Section 36a-676.
"Credit clinic". Section 36a-695.
"Credit rating agency". Section 36a-695.
"Credit report". Section 36a-695.
"Credit sale". Section 36a-676.
"Credit union service organization". Section 36a-435b.
"Credit union service organization services". Section 36a-435b.
"De novo branch". Section 36a-410.
"Debt". Section 36a-645.
"Debt adjustment". Section 36a-655.
"Debt mutual fund". Sections 36a-275 and 36a-459a.
"Debt securities". Sections 36a-275 and 36a-459a.
"Debtor". Section 36a-655.
"Deliver". Section 36a-316.
"Deposit". Section 36a-316.
"Deposit account". Sections 36a-136, as amended by this act, and 36a-316.
"Deposit account charge". Section 36a-316.
"Deposit account disclosures". Section 36a-316.
"Deposit contract". Section 36a-316.
"Deposit services". Section 36a-425.
"Depositor". Section 36a-316.
"Director". Section 36a-435b.
"Earning period". Section 36a-316.

"Electronic payment instrument". Section 36a-596.
"Eligible account holder". Section 36a-136, as amended by this act.
"Eligible collateral". Section 36a-330.
"Equity mutual fund". Sections 36a-276 and 36a-459a.
"Equity security". Sections 36a-276 and 36a-459a.
"Executive officer". Sections 36a-263 and 36a-469c, as amended by this act.
"Federal Credit Union Act". Section 36a-435b.
"Federal Home Mortgage Disclosure Act". Section 36a-736.
"Fiduciary". Section 36a-365.
"Filing fee". Section 36a-770.
"Finance charge". Sections 36a-690 and 36a-770.
"Financial institution". Sections 36a-41, 36a-44a, 36a-155, 36a-316, 36a-330, 36a-435b and 36a-736.
"Financial records". Section 36a-41.
"First mortgage broker". Section 36a-485.
"First mortgage correspondent lender". Section 36a-485.
"First mortgage lender". Section 36a-485.
"First mortgage loan". Sections 36a-485, 36a-705 and 36a-715.
"Foreign banking corporation". Section 36a-425.
"General facility". Section 36a-580.
"Global net payment entitlement". Section 36a-428n.
"Global net payment obligation". Section 36a-428n.
"Goods". Sections 36a-535 and 36a-770.
"Graduated payment mortgage loan". Section 36a-265.
"Guardian". Section 36a-365.
"High cost home loan". Section 36a-746a.
"Holder". Section 36a-596.
"Home banking services". Section 36a-170.
"Home banking terminal". Section 36a-170.
"Home improvement loan". Section 36a-736.
"Home purchase loan". Section 36a-736.
"Home state". Section 36a-410.
"Immediate family member". Section 36a-435b.
"Insider". Section 36a-454b.

"Installment loan contract". Sections 36a-535 and 36a-770.
"Insurance". Section 36a-455a.
"Insurance bank". Section 36a-285.
"Insurance department". Section 36a-285.
"Interest". Section 36a-316.
"Interest rate". Section 36a-316.
"Lender". Sections 36a-746a and 36a-770.
"Lessor". Section 36a-676.
"License". Section 36a-626.
"Licensee". Sections 36a-510, 36a-596 and 36a-626.
"Limited branch". Section 36a-145.
"Limited facility". Section 36a-580.
"Loan broker". Section 36a-615.
"Loss". Section 36a-330.
"Made in this state". Section 36a-770.
"Managing agent". Section 36a-365.
"Manufactured home". Section 36a-457b.
"Material litigation". Section 36a-596.
"Member". Section 36a-435b.
"Member business loan". Section 36a-458a.
"Member in good standing". Section 36a-435b.
"Membership share". Section 36a-435b.
"Money order". Section 36a-596.
"Money transmission". Section 36a-365.
"Mortgage insurance". Section 36a-725.
"Mortgage lender". Sections 36a-485, 36a-510 and 36a-705.
"Mortgage loan". Sections 36a-261, 36a-265 and 36a-457b.
"Mortgage rate lock-in". Section 36a-705.
"Mortgage servicing company". Section 36a-715.
"Mortgagor". Section 36a-715.
"Motor vehicle". Section 36a-770.
"Multiple common bond membership". Section 36a-435b.
"Municipality". Section 36a-800.
"Net outstanding member business loan balance". Section 36a-458a.
"Net worth". Sections 36a-441a, 36a-458a and 36a-596.

"Network". Section 36a-155.
"Nonrefundable". Sections 36a-498 and 36a-521.
"Note account". Sections 36a-301 and 36a-456b.
"Office". Section 36a-316.
"Officer". Section 36a-435b.
"Open-end credit plan". Section 36a-676.
"Open-end loan". Section 36a-565.
"Organization". Section 36a-800.
"Originator". Sections 36a-485 and 36a-510.
"Out-of-state holding company". Section 36a-410.
"Outstanding". Section 36a-596.
"Passbook savings account". Section 36a-316.
"Payment instrument". Section 36a-596.
"Periodic statement". Section 36a-316.
"Permissible investment". Section 36a-596.
"Person". Section 36a-184.
"Post". Section 36a-316.
"Prepaid finance charge". Section 36a-746a.
"Prepayment penalty". Section 36a-746a.
"Prime quality". Section 36a-596.
"Principal amount of the loan". Section 36a-510.
"Processor". Section 36a-155.
"Public deposit". Section 36a-330.
"Purchaser". Section 36a-596.
"Qualified financial contract". Section 36a-428n.
"Qualified public depository" and "depository". Section 36a-330.
"Real estate". Section 36a-457b.
"Records". Section 36a-17.
"Related person". Section 36a-53, as amended by this act.
"Relocate". Sections 36a-145 and 36a-462a.
"Residential property". Section 36a-485.
"Retail buyer". Sections 36a-535 and 36a-770.
"Retail credit transaction". Section 42-100b.
"Retail deposits". Section 36a-70, as amended by this act.
"Retail installment contract". Sections 36a-535 and 36a-770.

"Retail installment sale". Sections 36a-535 and 36a-770.
"Retail seller". Sections 36a-535 and 36a-770.
"Reverse annuity mortgage loan". Section 36a-265.
"Sales finance company". Sections 36a-535 and 36a-770.
"Savings department". Section 36a-285.
"Savings deposit". Section 36a-316.
"Secondary mortgage broker". Section 36a-510.
"Secondary mortgage correspondent lender". Section 36a-510.
"Secondary mortgage lender". Section 36a-510.
"Secondary mortgage loan". Section 36a-510.
"Security convertible into a voting security". Section 36a-184.
"Senior management". Section 36a-435b.
"Share". Section 36a-435b.
"Simulated check". Sections 36a-485 and 36a-510.
"Single common bond membership". Section 36a-435b.
"Social purpose investment". Section 36a-277.
"Standard mortgage loan". Section 36a-265.
"Table funding agreement". Section 36a-485.
"Tax and loan account". Sections 36a-301 and 36a-456b.
"The Savings Bank Life Insurance Company". Section 36a-285.
"Time account". Section 36a-316.
"Transaction". Section 36a-215.
"Travelers check". Section 36a-596.
"Troubled Connecticut credit union". Section 36a-448a, as amended by this act.
"Troubled financial institution". Section 36a-215.
"Uninsured bank". Section 36a-70, as amended by this act.
"Unsecured loan". Section 36a-615.
"Warehouse agreement". Section 36a-485.

Sec. 2. Section 36a-50 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) (1) Whenever the commissioner finds as the result of an investigation that any person has violated any provision of the general

statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, the commissioner may send a notice to such person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the person on the earlier of the date of actual receipt or seven days after mailing or sending. Any such notice shall include: (A) A statement of the time, place, and nature of the hearing; (B) a statement of the legal authority and jurisdiction under which the hearing is to be held; (C) a reference to the particular sections of the general statutes, regulations, rules or orders alleged to have been violated; (D) a short and plain statement of the matters asserted; (E) the maximum penalty that may be imposed for such violation; and (F) a statement indicating that such person may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice.

(2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice unless such person fails to appear at the hearing. After the hearing, if the commissioner finds that the person has violated any such provision, regulation, rule or order, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by law, order that a civil penalty not exceeding **[**seven thousand five hundred**]** one hundred thousand dollars per violation be imposed upon such person. **[**, except that in the case of a violation of sections 36a-746b to 36a-746g, inclusive, the commissioner may order that a civil penalty not exceeding fifteen thousand dollars per violation be imposed upon such person.**]** If such person does not request a hearing within the time specified in the notice or fails to appear at the hearing, the commissioner may, as the facts require, order that a civil penalty not exceeding **[**seven thousand five hundred**]** one hundred thousand dollars per violation be imposed upon such person. **[**, except that in the case of a violation of sections 36a-746b to 36a-746g, inclusive, the commissioner may order that a civil penalty, not exceeding fifteen thousand dollars per violation, be imposed upon such person.**]**

(3) Each action undertaken by the commissioner under this subsection shall be in accordance with the provisions of chapter 54.

(b) Whenever it appears to the commissioner that any such person has violated, is violating or is about to violate any such provision, regulation, rule or order, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by law: (1) Bring an action in the superior court for the judicial district of Hartford to enjoin the acts or practices and to enforce compliance with any such provision, regulation, rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for such person or such person's assets. The court shall not require the commissioner to post a bond; (2) seek a court order imposing a penalty not to exceed **[**seven thousand five hundred**]** one hundred thousand dollars per violation against any such person found to have violated any such provision, regulation, rule or order; **[**issued by the commissioner;**]** or (3) apply to the superior court for the judicial district of Hartford for an order of restitution whereby such person shall be ordered to make restitution of any sums shown by the commissioner to have been obtained by such person in violation of any such provision, regulation, rule or order, plus interest at the rate set forth in section 37-3a. Such restitution shall, at the option of the court, be payable to the receiver or conservator appointed pursuant to this subsection, or directly to the person whose assets were obtained in violation of any such provision, regulation, rule or order. Whenever the commissioner prevails in any action brought under this subsection, the court may allow to the state its costs.

(c) The provisions of this section shall not apply to chapters 672a, 672b and 672c.

Sec. 3. Section 36a-53 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) As used in this section, (1) "related person" means a director, officer, employee, independent contractor, manager or general partner,

and (2) "Connecticut holding company" means a holding company that holds a subsidiary that is a Connecticut bank.

(b) (1) Whenever the commissioner finds as the result of an investigation that any [officer or director] related person of any Connecticut bank, [or officer or director, as defined in section 36a-435b, of any] Connecticut holding company, Connecticut credit union or [any officer, director, manager or general partner of a] Connecticut credit union service organization [(1)] (A) has violated or is violating any provision of the general statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, or any condition imposed in writing by the commissioner, [(2)] (B) has breached or is breaching any written agreement with the commissioner, [(3)] (C) has engaged or participated in or is engaging or participating in any unsafe or unsound practice in connection with any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, [(4)] (D) has been or is charged in any information, indictment or complaint with the commission of or participation in a crime which is punishable by imprisonment for a term exceeding one year under state or federal law, and continued service or participation by such [officer, director, manager or general partner] related person may pose a threat to the interests of depositors or members, or threatens to impair public confidence in any bank, Connecticut holding company, Connecticut credit union, federal credit union or Connecticut credit union service organization, [(5)] (E) has used or is using such [officer's, director's, manager's or general partner's official] related person's position in a manner contrary to the interest of any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, or its depositors or members, or [(6)] (F) has been or is negligent in the performance of such [officer's, director's, manager's or general partner's] related person's duties, after having been warned in writing by the commissioner to discontinue any such continuing delinquency, the commissioner may send notice to such [officer, director, manager or general partner] related person by registered or certified mail, return receipt requested, or by any express

delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the **[**officer, director, manager or general partner**]** related person on the earlier of the date of actual receipt or seven days after mailing or sending. Any such notice shall include: **[**(A)**]** (i) A statement of the time, place and nature of the hearing; **[**(B)**]** (ii) a statement of the legal authority and jurisdiction under which the hearing is to be held; **[**(C)**]** (iii) a reference to the particular sections of the general statutes, regulations, rules or orders alleged to have been violated; **[**(D)**]** (iv) a short and plain statement of the matters asserted; and **[**(E)**]** (v) a statement indicating that such **[**officer, director, manager or general partner**]** related person may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice. If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice unless such **[**officer, director, manager or general partner**]** related person fails to appear at the hearing. After the hearing, if the commissioner finds that any of the grounds set forth in **[**subdivisions (1) to (6)**]** subparagraphs (A) to (F), inclusive, of this **[**subsection**]** subdivision exist with respect to such **[**officer, director, manager or general partner**]** related person, the commissioner shall order the removal of such **[**officer, director, manager or general partner**]** related person from office and from any participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization. If such **[**officer, director, manager or general partner**]** related person fails to appear at the hearing, the commissioner shall order the removal of such **[**officer, director, manager or general partner**]** related person from office and from any participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization. If the commissioner finds that the protection of the Connecticut bank, Connecticut holding company or its subsidiary that is a Connecticut bank, Connecticut credit union or Connecticut credit union service organization, or the interest of its depositors, depositors of its subsidiary that is a Connecticut bank or members requires immediate

action, the commissioner may suspend any such [officer, director, manager or general partner] related person from office and from further participation in the management of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization, by incorporating a finding to that effect in such notice. The suspension or prohibition shall become effective upon receipt of such notice and, unless stayed by a court, shall remain in effect until the entry of a permanent order or the dismissal of the matters asserted.

(2) Any related person who has been removed or suspended from office pursuant to an order issued under this subsection may not continue to hold or commence holding office as a related person of any bank, Connecticut credit union, federal credit union, licensee or registrant under titles 36a and 36b or holding company that holds a subsidiary that is a bank, while such order is in effect, without the written consent of the commissioner.

[(b)] (c) Whenever it appears to the commissioner that any [such] Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization (1) is violating, has violated or is about to violate any provision of the general statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, or any condition imposed in writing by the commissioner, (2) is breaching, has breached or is about to breach any written agreement with the commissioner, or (3) is engaging, has engaged or is about to engage, in an unsafe or unsound practice, the commissioner may send notice and take action against the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization in accordance with section 36a-52. If the commissioner finds that the actual or threatened violation, breach or unsafe or unsound practice or practices specified in such notice is likely to cause insolvency or substantial dissipation of assets or earnings of the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization, or is likely to otherwise seriously prejudice

the interests of its depositors or members, the commissioner may incorporate a finding to that effect in such notice and issue a temporary order requiring the Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization to cease and desist from any such violation, breach or practice. The temporary order shall become effective upon receipt and, unless set aside or modified by a court, shall remain in effect until the effective date of a permanent order or the dismissal of the matters asserted.

[(c)**]** (d) (1) Whenever the commissioner finds as the result of an investigation that any **[**such officer, director, manager, general partner,**]** Connecticut bank, Connecticut holding company, Connecticut credit union, **[**or**]** Connecticut credit union service organization or any related person of any such entity has (A) violated any provision of the general statutes within the jurisdiction of the commissioner, or any regulation, rule or order adopted or issued thereunder, or any condition imposed in writing by the commissioner, (B) breached any written agreement with the commissioner, (C) engaged or participated in any unsafe or unsound practice, or (D) used such **[**officer's, director's, manager's or general partner's official**]** related person's position in a manner contrary to the interest of any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, or its depositors or members, the commissioner may send notice to and take action against such **[**officer, director, manager, general partner,**]** Connecticut bank, Connecticut holding company, Connecticut credit union, **[**or**]** Connecticut credit union service organization or related person regarding the violation, breach, unsafe or unsound practice, or misuse of **[**official**]** position in accordance with section 36a-50, as amended by this act. Any finding made by the commissioner pursuant to this subdivision shall be considered a violation of this subsection for purposes of section 36a-50, as amended by this act.

(2) Notwithstanding the provisions of section 36a-50, as amended by this act, unless the violation, breach, unsafe or unsound practice, or

misuse of [official] position found to have occurred pursuant to this subsection and section 36a-50, as amended by this act, is such that it (A) is part of a pattern of misconduct, (B) has caused or is likely to cause a loss other than a de minimis loss to any bank, Connecticut holding company, Connecticut credit union, federal credit union or credit union service organization, (C) will result or has resulted in a pecuniary gain to [an officer, director, manager or general partner] a related person of any Connecticut bank, Connecticut holding company, Connecticut credit union or Connecticut credit union service organization, or (D) is a violation of [section 36a-53a] sections 36a-53a to 36a-56, inclusive, or sections 36a-746b to 36a-746g, inclusive, the civil penalty the commissioner may impose under this subsection and section 36a-50, as amended by this act, shall not exceed [one] ten thousand dollars.

(3) In determining the amount of any penalty imposed under this subsection and section 36a-50, as amended by this act, the commissioner shall take into account (A) the size of the financial resources and good faith of the Connecticut bank, Connecticut holding company, Connecticut credit union, Connecticut credit union service organization, [officer or director of such Connecticut bank, Connecticut credit union or officer, director, manager or general partner of such Connecticut credit union service organization] or related person, (B) the gravity of the violation, breach, unsafe or unsound practice or misuse of [official] position, (C) the history of previous violations, breaches, unsafe or unsound practices, or misuse of [official] position, and (D) such other matters as justice may require, except that this subdivision does not apply to any violation of section 36a-53a and sections 36a-746b to 36a-746g, inclusive.

[(d)] (e) In connection with any investigation or proceeding under this section and section 36a-50, as amended by this act, the commissioner shall make reasonable efforts to obtain from a federal banking or credit union agency any relevant information that the commissioner knows to be in the possession of such agency.

(f) The resignation, termination of employment or separation, including a separation caused by the closing of the institution, of any related person against whom the commissioner may issue an order under this section, shall not affect the authority of the commissioner to issue any notice and proceed under this section against such related person if such notice is sent before the end of the six-year period beginning on the date of such resignation, termination of employment or separation.

Sec. 4. Section 36a-54 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

Any officer, agent, or employee of any financial institution who makes any false entry upon the collection or forwarding register or any other book of any such institution, or who fails correctly to record on the books of such institution any change in its assets or liabilities, with intent to deceive the commissioner or the officers or auditors of any such institution, and any person who, with like intent, aids or abets any such officer, agent, or employee in the violation of any provision of this section, shall be imprisoned not more than ten years. A finding by the commissioner as a result of an investigation of any such false entry, failure to correctly record or aiding or abetting shall be considered a violation of this section for purposes of sections 36a-50 to 36a-53, inclusive, as amended by this act.

Sec. 5. Section 36a-55 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

Any person who, wilfully and maliciously, makes, circulates or transmits to another any false statement, rumor or suggestion, written, printed or oral, which is, directly or by inference, derogatory to the financial condition or affects the solvency or financial standing of any bank, out-of-state bank that maintains in this state a branch as defined in section 36a-410, Connecticut credit union or federal credit union, or who counsels, aids or induces another to transmit or circulate any such statement or rumor, shall be fined not more than one thousand dollars or imprisoned not more than one year or both. A finding by the

commissioner as a result of an investigation of any such making, circulating or transmitting, or counseling, aiding or inducing shall be considered a violation of this section for purposes of sections 36a-50 to 36a-53, inclusive, as amended by this act.

Sec. 6. Section 36a-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

Any person who knowingly makes any false statement or report, or wilfully overvalues any land, property or security, with intent to defraud and for the purpose of influencing in any way the action of a bank, out-of-state bank that maintains in this state a branch as defined in section 36a-410, Connecticut credit union, small loan licensee or any first or secondary mortgage lender or broker licensee, upon any application, advance, commitment, loan or extension of credit, or any change, extension, renewal or refinancing thereof, or the acceptance, release or substitution of security therefor, and upon which such bank, credit union or licensee relies in taking such action, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both. A finding by the commissioner as a result of an investigation of any such making or overvaluing shall be considered a violation of this section for purposes of sections 36a-50 to 36a-53, inclusive, as amended by this act.

Sec. 7. Subsection (c) of section 36a-70 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) The person or persons organizing a Connecticut bank shall execute, acknowledge and file with the commissioner an application to organize. Such application to organize shall include: (1) A proposed certificate of incorporation stating: (A) The name and type of the Connecticut bank; (B) the town in which the main office is to be located; (C) in the case of a capital stock Connecticut bank, the amount, authorized number and par value, if any, of shares of its capital stock; (D) the minimum amount of equity capital with which the Connecticut bank shall commence business, which amount may be less than its

authorized capital but shall not be less than that required by subsection (b) of this section; (E) the name, occupation and residence, post office or business address of each organizer and prospective initial director of the Connecticut bank; and (2) a proposed business plan. The organizers shall separately file with the commissioner a notice of the residence of each organizer and prospective initial director whose residence address is not included in the proposed certificate of incorporation. In connection with an application to organize a Connecticut bank, the commissioner may, in the commissioner's discretion, and in accordance with section 29-17a, arrange for the fingerprinting or for conducting any other method of positive identification required by the State Police Bureau of Investigation of each organizer and prospective initial director, to be used in conducting a criminal history records check.

Sec. 8. Subsection (f) of section 36a-125 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(f) Upon application by the constituent banks, and upon receipt of a copy of the agreement of merger or consolidation, certified by the secretaries of the respective constituent final banks and certified by the agents for the organizers of the respective constituent temporary banks as having been duly approved in accordance with subsection (b) of this section, the commissioner shall determine whether such merger or consolidation will promote public convenience, whether benefits to the public clearly outweigh possible adverse effects, including, but not limited to, an undue concentration of resources and decreased or unfair competition, and whether the terms thereof are reasonable and in accordance with law and sound public policy. The commissioner, if the commissioner so determines, shall approve the merger or consolidation. The commissioner shall not approve such merger or consolidation: (1) If it involves the acquisition of a Connecticut bank that has not been in existence and continuously operating for at least five years, unless the commissioner waives this requirement; **[**or**]** (2) if the resulting bank including all insured depository institutions which

are affiliates of the resulting bank, upon consummation of the merger or consolidation, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits; or (3) if the programs, policies and procedures relating to anti-money laundering activities of the constituent banks, or the proposed programs, policies and procedures of the resulting bank relating to anti-money laundering activities, are inadequate, or the constituent banks do not have a record of compliance with anti-money laundering laws and regulations. In addition, the commissioner shall not approve such merger or consolidation unless the commissioner considers whether: (A) The investment and lending policies of the constituent banks, or the proposed investment and lending policies of the resulting bank, are consistent with safe and sound banking practices and will benefit the economy of this state; (B) the services or proposed services of the resulting bank are consistent with safe and sound banking practices and will benefit the economy of this state; (C) the constituent banks have sufficient capital to ensure, and agree to ensure, that the resulting bank will comply with applicable minimum capital requirements; (D) the constituent banks have sufficient managerial resources to operate the resulting bank in a safe and sound manner; and (E) the proposed merger or consolidation will not substantially lessen competition in the banking industry of this state. The commissioner shall not approve such merger or consolidation unless the commissioner makes the findings required by section 36a-34 and, in the case of a merger or consolidation of a mutual banking institution, determines that the interests of depositors are protected or served by the agreement of merger or consolidation. After approval of the merger or consolidation by the commissioner, a copy of the agreement and a copy of the commissioner's approval shall be filed in the office of the Secretary of the State. The resulting bank shall not commence business unless its insurable accounts and deposits are insured by the Federal Deposit Insurance Corporation or its successor agency.

Sec. 9. Subdivision (1) of subsection (b) of section 36a-135 of the

general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that (A) the converting institution has complied with all applicable provisions of law, and (B) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations.

Sec. 10. Subdivision (1) of subsection (c) of section 36a-135 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that: (A) The converting institution has complied with all applicable provisions of law; (B) the converting institution has equity capital at least equal to the minimum equity capital required for the organization of a Connecticut bank; (C) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations; and **[**(C)**]** (D) the proposed conversion will serve the public necessity and convenience.

Sec. 11. Subsection (j) of section 36a-136 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(j) The commissioner shall approve a conversion under this section if the commissioner determines that: (1) The converting institution has complied with all applicable provisions of law; (2) the conversion would not result in any reduction of the converting institution's amount of equity capital, less any subordinated debt recognized as bona fide capital; (3) the conversion would not result in a taxable reorganization of the converting institution under the Internal

Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; (4) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations; and **[**(4)**]** (5) the plan of conversion is fair to depositors. The converted institution shall not commence business unless its insurable accounts and deposits are insured by the Federal Deposit Insurance Corporation or its successor agency.

Sec. 12. Subdivision (1) of subsection (b) of section 36a-137 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines (A) that the converting bank has complied with all applicable provisions of law, and (B) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations.

Sec. 13. Subdivision (1) of subsection (d) of section 36a-137 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(1) The commissioner shall approve a conversion under this subsection if the commissioner determines that: (A) The converting bank has complied with all applicable provisions of law; (B) the converting bank has equity capital at least equal to the minimum equity capital for the organization of a Connecticut bank; (C) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations; and **[**(C)**]** (D) the proposed conversion will serve public necessity and convenience.

Sec. 14. Subsection (c) of section 36a-138 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) The commissioner shall approve a conversion under this section if the commissioner determines that: (1) The converting institution has complied with all applicable provisions of law; (2) the proposed conversion will serve public necessity and convenience; **[**and**]** (3) in the case of a conversion to a mutual savings bank or mutual savings and loan association, the converting institution has equity capital at least equal to the minimum equity capital required for the organization of a Connecticut bank; and (4) the programs, policies and procedures of the converting institution relating to anti-money laundering activity are adequate, and the converting institution has a record of compliance with anti-money laundering laws and regulations. The converted institution shall not commence business unless its insurable accounts and deposits are insured by the Federal Deposit Insurance Corporation or its successor agency.

Sec. 15. Subsection (c) of section 36a-185 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) The commissioner shall disapprove such offer, invitation, request, agreement or acquisition if: (1) It involves the acquisition of the voting securities or securities convertible into voting securities of a bank that has not been in existence and continuously operating for at least five years, or a holding company, the subsidiary banks of which have not been in existence and continuously operating for at least five years, unless the commissioner waives this requirement; **[**or**]** (2) the acquiring person, including all insured depository institutions which are affiliates of the person, upon consummation of the acquisition, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits; (3) the commissioner cannot make the findings required by section 36a-34; or (4) the

programs, policies and procedures of the acquiring person relating to anti-money laundering activity are inadequate, and the acquiring person does not have a record of compliance with anti-money laundering laws and regulations. In making the determination to disapprove or not to disapprove such offer, invitation, request, agreement or acquisition, the commissioner shall consider whether: (A) The investment and lending policies of the bank referred to in the acquisition statement are consistent with safe and sound banking practices and will benefit the economy of this state; (B) the services or proposed services of the bank referred to in the acquisition statement are consistent with safe and sound banking practices and will benefit the economy of this state; (C) the proposed acquisition will not substantially lessen competition in the banking industry of this state; and (D) the acquiring person, if such person would be the beneficial owner of twenty-five per cent or more of any class of voting securities of the bank or holding company referred to in the acquisition statement, (i) has sufficient capital to ensure, and agrees to ensure, that the bank referred to in the acquisition statement will comply with applicable minimum capital requirements, and (ii) has sufficient managerial resources to operate the bank or holding company referred to in the acquisition statement in a safe and sound manner. **[**The commissioner shall disapprove such offer, invitation, request, agreement or acquisition unless the commissioner can make the findings required by section 36a-34.**]**

Sec. 16. Section 36a-210 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) With the approval of the commissioner, (1) a Connecticut bank or a Connecticut credit union may sell all or a significant part of its assets and business to a bank, and (2) a Connecticut credit union may sell all or a significant part of its assets and business to a Connecticut credit union or a federal credit union. The selling Connecticut bank must have been in existence and continuously operating for at least five years unless the commissioner waives this requirement. The commissioner shall not approve such sale if (A) the purchasing

institution, including all insured depository institutions which are affiliates of such institution, upon consummation of the sale, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits, or (B) the programs, policies and procedures relating to anti-money laundering activities of the purchasing institution are inadequate, or the purchasing institution does not have a record of compliance with anti-money laundering laws and regulations. The selling and purchasing institutions shall file with the commissioner a written agreement approved and executed by a majority of the governing board of each institution prescribing the terms and conditions of the transaction. In the case of a sale of all of the assets and business of the selling institution, the terms of the agreement shall at least provide for full payment of the amounts due depositors, share account holders and creditors of the selling institution. Payment for all or part of the assets of the selling institution may be made in cash or by making available on demand to depositors, share account holders and other creditors thereof funds on deposit with the purchasing institution. Prior to the sale of all or substantially all of the assets and business of an institution pursuant to this section, the selling institution shall obtain authorization for the sale by the affirmative vote of at least: **[**(A)**]** (i) Two-thirds of the voting power of the outstanding shares of each class of stock, whether or not otherwise entitled to vote, in the case of a capital stock Connecticut bank; **[**(B)**]** (ii) two-thirds of the voting power of the members or depositors, in the case of a mutual savings and loan association or a Connecticut credit union; and **[**(C)**]** (iii) two-thirds of the governing board and two-thirds of the voting power of the corporators, in the case of mutual savings bank, which voting power shall, in any event, be no less than twenty-five corporators.

(b) In lieu of the vote required by subsection (a) of this section, the commissioner may certify in writing that the protection of depositors, share account holders, members or creditors of the selling institution requires that the sale proceed without delay.

(c) When a Connecticut bank or Connecticut credit union has sold and conveyed or arranged to sell and convey all of its assets in accordance with this section, the governing board of the selling institution shall, after receiving the approval of the commissioner as provided in subsection (a), send a written notice of such sale or proposed sale to each of its depositors, share account holders and other known creditors and shall cause a copy of such notice to be published in a newspaper published in this state and having a circulation in the town in which the main office of such institution is located. Such notice shall inform the depositors, share account holders and creditors of the selling institution of the sale and of the terms thereof with reference to payment of depositors, share account holders and creditors. Such notice may provide that creditors other than depositors and share account holders who fail to present their claims to the selling institution within four months of the date of the notice shall be forever barred, and that creditors whose claims are presented within the time limited but which are disallowed by the selling institution shall commence an action to enforce their claims within three months of receipt of written notice disallowing their claims or be forever barred. Depositors or share account holders shall not be required to present claims for deposits or share accounts as shown by the records of the selling institution.

(d) At any time during the liquidation of the affairs of the selling institution, the governing board may have the privileges of a business corporation in voluntary dissolution as provided by law.

(e) After the claims of depositors, share account holders and creditors have been fully paid either by transfer to the purchasing institution or in cash, or barred, the liability of the selling institution for such claims shall cease.

(f) Any surplus remaining in the hands of the selling institution, after it has sold all its assets and business, shall, after payment of the expenses of liquidation, be distributed to those entitled by law to receive such surplus in the manner provided in the agreement of sale.

Thereupon the governing board shall file a certificate with the commissioner stating that the affairs of the institution have been fully liquidated. Upon verifying the certificate as to the facts stated therein, the commissioner shall endorse the certificate "approved" and shall file a copy in the office of the Secretary of the State. Upon the finding by the Secretary of the State that the certificate complies with law, the secretary shall endorse the same "approved" and record the certificate. Thereupon the corporate existence of the institution shall cease.

(g) No Connecticut bank may purchase all or a significant part of the assets and business of a federal bank, a federal credit union or an out-of-state bank, and no Connecticut credit union may purchase all or a significant part of the assets and business of a federal credit union, without the approval of the commissioner. Such Connecticut bank or Connecticut credit union shall file with the commissioner an application that includes a copy of any notice, application and other information filed with any federal or state banking or credit union regulator in connection with such purchase and such additional information as may be required by the commissioner. The commissioner shall not approve such purchase if: (1) It involves the acquisition of a federal bank or out-of-state bank that has not been in existence and continuously operating for at least five years, unless the commissioner waives this requirement; **[**or**]** (2) the purchasing institution, including all insured depository institutions which are affiliates of such institution, upon consummation of the purchase, would control thirty per cent or more of the total amount of deposits of insured depository institutions in this state, unless the commissioner permits a greater percentage of such deposits; or (3) the programs, policies and procedures relating to anti-money laundering activities of the purchasing institution are inadequate, or the purchasing institution does not have a record of compliance with anti-money laundering laws and regulations.

(h) No bank or out-of-state bank may purchase or otherwise acquire the assets and business of a Connecticut bank or Connecticut credit union from the receiver of such bank or credit union without the

approval of the commissioner.

Sec. 17. Section 36a-260 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) A Connecticut bank may make secured and unsecured loans, except as otherwise expressly limited by sections 36a-261 to **[**36a-265**]** 36a-266, inclusive.

(b) At least once a year, the governing board of each Connecticut bank shall adopt a loan policy governing loans made pursuant to sections 36a-260 to 36a-266, inclusive. No Connecticut bank shall make any secured or unsecured loan unless the making of such loan is consistent with such loan policy. The policy shall require written applications for all loans, and address the categories and types of secured and unsecured loans offered by the bank, the manner in which loans will be made and approved, underwriting guidelines and collateral requirements, and, in accordance with safety and soundness, acceptable standards for title review, title insurance and appraiser qualifications, procedures for the approval and selection of appraisers, appraisal and evaluation standards, and the bank's administration of the appraisal and evaluation process. The loan policy and any loan made pursuant to the policy shall be subject to the examination of the commissioner concerning safe and sound banking practices.

(c) At least semiannually, the governing board of each Connecticut bank shall review loans made by the Connecticut bank pursuant to sections 36a-260 to 36a-266, inclusive. The minutes of the meetings of such governing board shall recite the results of each such review. The governing board shall cause the Connecticut bank to use reasonable efforts to divest as expeditiously as possible any loan which the governing board, upon its semiannual review, no longer deems prudent or consistent with the Connecticut bank's loan policy.

Sec. 18. Section 36a-262 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Except as otherwise provided in this section, the total direct or indirect liabilities of any one obligor that are not fully secured, however incurred, to any Connecticut bank, exclusive of such bank's investment in the investment securities of such obligor, shall not exceed at the time incurred fifteen per cent of the equity capital and reserves for loan and lease losses of such bank. The total direct or indirect liabilities of any one obligor that are fully secured, however incurred, to any Connecticut bank, exclusive of such bank's investment in the investment securities of such obligor, shall not exceed at the time incurred ten per cent of the equity capital and reserves for loan and lease losses of such bank, provided this limitation shall be separate from and in addition to the limitation on liabilities that are not fully secured. For purposes of this section, a liability shall be considered to be fully secured if it is secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the liability. For purposes of determining the limitations of this section, in computing the liabilities of an obligor, a liability is incurred at the time of the closing of the transaction, unless such closing is preceded by a legally binding written commitment to enter into the transaction, in which case such liability is incurred at the time of commitment and is net of any liabilities of the obligor to such bank that will be paid with the proceeds of the commitment at the time of closing. The limitations provided for in this subsection may be exceeded for a period of time not to exceed six hours if at the closing of any transaction at which such obligor incurs such liabilities to a Connecticut bank in excess of such limitations, such bank immediately assigns or participates out to one or more other persons an amount that constitutes not less than the excess over the applicable limitation. **[**For purposes of this section, in computing the liabilities of a partnership the individual liabilities of the general partners shall be included; and in computing the individual liabilities of a general partner, the liabilities of the partnership shall be included.**]** Obligations as endorser or guarantor of negotiable or nonnegotiable installment consumer paper which carry an agreement to repurchase on default, unless the bank's sole recourse

is to an agreed reserve held by it, in which case the liability shall be excluded, a full recourse endorsement or an unconditional guarantee by the person, partnership, association or corporation transferring the same, shall be subject under this section to a limitation of fifteen per cent of the bank's equity capital and reserves for loan and lease losses in addition to the applicable limitations of this section with respect to the makers of such obligations; provided, upon certification by an officer of the bank designated for that purpose by the governing board that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each maker shall be the sole applicable loan limitation; and provided such certification shall be in writing and shall be retained as part of the records of such bank.

(b) Liabilities of one obligor shall be attributed to another person and each such person shall be deemed to be an obligor when proceeds of a loan are to be used for the direct benefit of the other person, to the extent of the proceeds to be so used, or a common enterprise is deemed to exist between such persons. For purposes of this section, the proceeds of a loan to an obligor shall be deemed to be used for the direct benefit of another person and shall be attributed to the person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services. For purposes of this section, a common enterprise shall be deemed to exist and liabilities of separate obligors shall be aggregated:

(1) When the expected source of repayment for each liability is the same for each obligor and neither obligor has another source of income from which the liability, together with the obligor's other liabilities, may be fully repaid. An employer shall not be treated as a source of repayment under this subdivision because of wages and salaries paid to an employee, unless the standards of subdivision (2) of this section are met;

(2) When loans are made (A) to obligors who are related directly or indirectly through common control, including where one obligor is directly or indirectly controlled by another obligor; and (B) substantial financial interdependence exists between or among the obligors. Substantial financial interdependence is deemed to exist when fifty per cent or more of one obligor's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other obligor. Gross receipts and expenditures include gross revenues, expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a Connecticut bank to acquire a business enterprise of which such obligors will own more than fifty per cent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the obligors for purposes of combining the acquisition loans; or

(4) When the commissioner determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(c) Loans to an obligor and its subsidiary, or to different subsidiaries of an obligor shall not be aggregated unless either the direct benefit or the common enterprise test is met. For purposes of this subsection, a corporation or a limited liability company is a subsidiary of an obligor if the obligor owns or beneficially owns directly or indirectly more than fifty per cent of the voting securities or voting interests of the corporation or company.

(d) Loans to a partnership, joint venture, limited liability company or association shall be deemed to be loans to each member of the partnership, joint venture, limited liability company or association. This provision shall not apply to limited partners in limited partnerships or to members of joint ventures, limited liability companies or associations unless the partners or members, by the terms of the partnership or membership agreement, are held generally liable for the debts or actions of the partnership, joint venture, limited

liability company or association, and such terms are valid under applicable law. Loans to partners or members of a partnership, joint venture, limited liability company or association are not attributed to the partnership, joint venture, limited liability company or association unless either the direct benefit or the common enterprise test is met. Both the direct benefit and common enterprise tests are met between a partner or member of a partnership, joint venture, limited liability company or association and such partnership, joint venture, limited liability company or association, when loans are made to the partner or member to purchase an interest in the partnership, joint venture, limited liability company or association. Loans to partners or members of a partnership, joint venture, limited liability company or association are not attributed to other members of the partnership, joint venture, limited liability company or association unless either the direct benefit or the common enterprise test is met.

(e) Loans to foreign governments and their agencies and instrumentalities shall be aggregated only if the loans fail to meet either the means test or the purpose test at the time the loan is made. The means test is met if the obligor has resources or revenue of its own sufficient to service its debt obligations. If the government's support, excluding guarantees by a central government of the obligor's debt, exceeds the obligor's annual revenues from other sources, it shall be presumed that the means test has not been satisfied. The purpose test is met if the purpose of the loan is consistent with the purposes of the obligor's general business. In order to show that the means test or the purpose test has been satisfied, a Connecticut bank shall, at a minimum, retain in its files the following items:

(1) A statement, accompanied by supporting documentation, describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

(2) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less

than three;

(3) Financial statements for each year the loan is outstanding;

(4) The bank's assessment of the obligor's means of servicing the loan, including specific reasons in support of that assessment. The assessment shall include an analysis of the obligor's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the obligor by third parties, including the obligor's central government; and

(5) A loan agreement or other written statement from the obligor which clearly describes the purpose of the loan. The written representation shall ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting the obligor will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

[(b)**]** (f) Obligations of the United States or this state, or of any town, city, borough or legally established district in this state which has the power to levy taxes for the payment of such obligations, shall not be subject to any limitation based upon such equity capital and reserves for loan and lease losses.

[(c)**]** (g) Obligations of any one obligor, with the exception of loans secured by mortgage of real estate and insured by the Federal Housing Administrator, which are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by the United States or the Federal Reserve Bank or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned, directly or indirectly by the United States, which, at the time of making such guaranty or commitment or agreement to take over or purchase, is authorized by law to enter into contracts with any financing institution guaranteeing such financing institution against loss of principal and interest on

loans, taxes or advances or agreeing to take over or purchase the same, shall not be subject to any limitation based upon such equity capital and reserves for loan and lease losses.

[(d)**]** (h) Obligations of any one obligor secured by the pledge of direct or fully guaranteed obligations of the United States shall be limited to fifty per cent of such equity capital and reserves for loan and lease losses; except that obligations secured by the pledge of direct or fully guaranteed obligations of the United States which will mature in not more than eighteen months shall not be subject under this section to any limitation based upon such equity capital and reserves for loan and lease losses.

[(e)**]** (i) Any Connecticut bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods, or which grow out of transactions involving the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance, or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No Connecticut bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its equity capital and reserves for loan and lease losses; provided the commissioner may authorize any Connecticut bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred per cent of its equity capital and reserves for loan and lease losses; provided further, the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per cent of such equity capital and reserves for loan and lease losses.

[(f)**]** (j) The following shall not be subject under this section to any limitation based upon such equity capital and reserves for loan and lease losses: (1) Obligations in the form of bankers' acceptances of other banks, provided such acceptances have at the time of discount not more than six months' sight, exclusive of days of grace, and are

endorsed by at least one other bank; (2) obligations resulting from the purchase of securities subject to a resale agreement; and (3) the rental obligation of a lessee of real or personal property under a lease made or held by such bank.

[(g)**]** (k) Obligations of any one obligor which are secured by a first mortgage on real estate shall be limited to fifty per cent of such equity capital and reserves for loan and lease losses, provided the total obligations to any one obligor to which this subsection and subsection (a) of this section apply shall not exceed fifty per cent of such equity capital and reserves for loan and lease losses. Loans made to manufacturing, industrial or commercial borrowers when the bank looks for repayment out of the operations of the borrowers' business, relying primarily on the borrowers' general credit standing and forecast of operation, shall not be considered to be secured by a mortgage on real estate for purposes of this subsection, even though such loan may be secured by a mortgage on real estate.

Sec. 19. Subsection (a) of section 36a-263 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) As used in this section, "executive officer" has the meaning given to such term in 12 CFR 215.2 of Subpart A of Federal Reserve Board Regulation O, 12 CFR Part 215, as from time to time amended. With the exception of Sections 215.7 and 215.13 of Subpart A of Federal Reserve Board Regulation O, 12 CFR Part 215, as from time to time amended, Connecticut banks are subject to and shall comply with the restrictions contained in 12 CFR Sections 337.3 and 349, as from time to time amended, and no executive officer, director or principal shareholder of a Connecticut bank or any of its affiliates shall knowingly receive, or knowingly permit any of such person's related interests to receive, from a Connecticut bank, directly or indirectly, any extension of credit that violates such restrictions. No executive officer, director, employee, agent or other person shall participate in any conduct of the affairs of the bank that violates this subsection.

Sec. 20. Section 36b-6 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) No person shall transact business in this state as a broker-dealer unless **[**he**]** such person is registered under sections 36b-2 to 36b-33, inclusive. No person shall transact business in this state as a broker-dealer in contravention of a currently effective sanction imposed by the Securities and Exchange Commission or by a self-regulatory organization registered under the federal laws administered by the Securities and Exchange Commission of which such person is a member, if the sanction would prohibit such person from effecting transactions in securities in this state. No individual shall transact business as an agent in this state unless **[**he**]** such individual is (1) registered as an agent of the broker-dealer or issuer whom **[**he**]** such individual represents in transacting such business, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of **[**section**]** Section 15(h) of the Securities Exchange Act of 1934. No individual shall transact business in this state as an agent of a broker-dealer in contravention of a currently effective sanction imposed by the Securities and Exchange Commission or a self-regulatory organization registered under the federal laws administered by the Securities and Exchange Commission of which the employing broker-dealer of such individual is a member, if the sanction would prohibit such individual from effecting transactions in securities in this state.

(b) No issuer shall employ an agent unless such agent is registered under sections 36b-2 to 36b-33, inclusive. No broker-dealer shall employ an agent unless such agent is (1) registered under sections 36b-2 to 36b-33, inclusive, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (2) and (3) of section 15(h) of the Securities Exchange Act of 1934. The registration of an agent is not effective during any period when **[**he**]** such agent is not associated with a particular broker-dealer registered under **[**said**]** sections 36b-2 to 36b-33, inclusive, or a particular issuer. When an agent begins or terminates a connection with a broker-dealer

or issuer, or begins or terminates those activities which make [him] such individual an agent, both the agent and the broker-dealer or issuer shall promptly notify the commissioner.

(c) No person shall transact business as an investment adviser, within or from this state, unless registered as such by the commissioner as provided in sections 36b-2 to 36b-33, inclusive, or exempted pursuant to subsection (e) of this section. No individual shall transact business as an investment adviser agent, within or from this state, unless [he] such individual is registered as an investment adviser agent of the investment adviser for whom [he] such individual acts in transacting such business. No investment adviser shall engage an investment adviser agent unless such investment adviser agent is registered under said sections. The registration of an investment adviser agent is not effective during any period when [he] such investment adviser agent is not associated with a particular investment adviser. When an investment adviser agent begins or terminates a connection with an investment adviser, both the investment adviser agent and the investment adviser shall promptly notify the commissioner. If an investment adviser or investment adviser agent provides such notice, such investment adviser or investment adviser agent shall not be liable for the failure of the other to give such notice.

(d) No broker-dealer or investment adviser shall transact business from any place of business located within this state unless that place of business is registered as a branch office with the commissioner pursuant to this subsection. [, provided an investment adviser that is registered with the Securities and Exchange Commission may, in lieu of filing an application for branch office registration, file a notice with the commissioner for each branch office of the adviser located within this state together with a nonrefundable notice fee of one hundred dollars per branch office.] An application for branch office registration shall be made on forms prescribed by the commissioner and shall be filed with the commissioner, together with a nonrefundable application fee of one hundred dollars per branch office. A broker-dealer or investment adviser [, other than an investment adviser that is

registered with the Securities and Exchange Commission,**]** shall promptly notify the commissioner in writing if such broker-dealer or investment adviser (1) engages a new manager at a branch office in this state, (2) acquires a branch office of another broker-dealer or investment adviser in this state, or (3) relocates a branch office in this state. In the case of a branch office acquisition or relocation, such broker-dealer or investment adviser shall pay to the commissioner a nonrefundable fee of one hundred dollars. **[**An investment adviser that is registered with the Securities and Exchange Commission shall notify the commissioner of an acquisition or relocation of any branch office of the investment adviser in this state in the same manner as and concurrently with the notification of such information to the Securities and Exchange Commission and shall pay to the commissioner a nonrefundable fee of one hundred dollars.**]** Each registrant or applicant for branch office registration **[**, and each investment adviser with a branch office in this state that is registered with the Securities and Exchange Commission,**]** shall pay the actual cost, as determined by the commissioner, of any reasonable investigation or examination made of such registrant **[**,**]** or applicant **[**or investment adviser**]** by or on behalf of the commissioner.

(e) The following investment advisers are exempted from the registration requirements under subsection (c) of this section: Any investment adviser that (1) is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940; (2) is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or (3) has no place of business in this state and, during the preceding twelve months, has had no more than five clients who are residents of this state. Any investment adviser claiming an exemption pursuant to subdivision (1) or (2) of this subsection that is not otherwise excluded under subsection (10) of section 36b-3, shall first file with the commissioner a notice of exemption together with a consent to service of process as required by subsection (g) of section 36b-33. The notice of exemption shall contain such information as the commissioner may require and shall be accompanied by a nonrefundable fee of two hundred fifty

dollars. Such notice of exemption shall be valid until December thirty-first of the calendar year in which it was first filed and may be renewed annually thereafter upon submission of such information as the commissioner may require together with a nonrefundable fee of one hundred fifty dollars. If any investment adviser that is exempted from registration pursuant to subdivision (1) or (2) of this subsection fails or refuses to pay any fee required by this subsection, the commissioner may require such investment adviser to register pursuant to subsection (c) of this section. For purposes of this subsection, a delay in the payment of a fee or an underpayment of a fee which is promptly remedied shall not constitute a failure or refusal to pay such fee.

(f) Any broker-dealer or investment adviser ceasing to transact business at any office in this state shall, in addition to providing written notice to the commissioner prior to the termination of business activity at that office, (1) provide written notice to each customer or client serviced by such office at least ten business days prior to the termination of business activity at that office, or (2) demonstrate to the commissioner, in writing, the reasons why such notice to customers or clients cannot be provided within the time prescribed. If the commissioner finds that the broker-dealer or investment adviser cannot provide notice to customers or clients at least ten business days prior to the termination of business activity, the commissioner may exempt the broker-dealer or investment adviser from giving such notice. The commissioner shall act upon a request for such exemption within five business days following **[**his**]** receipt by the commissioner of the written request for such an exemption. The notice to customers or clients shall contain the following information: The date and reasons why business activity will terminate at the office; if applicable, a description of the procedure the customer or client may follow to maintain the customer's account at any other office of the broker-dealer or investment adviser; the procedure for transferring the customer's or client's account to another broker-dealer or investment adviser; and the procedure for making delivery to the customer or client of any funds or securities held by the broker-dealer or

investment adviser.

(g) Any broker-dealer or investment adviser ceasing to transact business at any office in this state as a result of executing an agreement and plan of merger or acquisition shall provide written notice to the commissioner and to each customer or client serviced by such office not later than the date such merger or acquisition is completed. The notice provided to each customer or client shall contain the information specified in subsection (f) of this section.

(h) Any broker-dealer or investment adviser ceasing to transact business at any office in this state as a result of the commencement of a bankruptcy proceeding by such broker-dealer or investment adviser or by a creditor or creditors of such broker-dealer or investment adviser shall immediately upon the filing of a petition with the bankruptcy court, provide written notice to the commissioner. The commissioner shall determine the time and manner in which notice shall be provided to each customer or client serviced by such office.

(i) For purposes of subsections (d), (f), (g) and (h) of this section, "investment adviser" means an investment adviser registered or required to be registered with the commissioner.

Sec. 21. Section 36b-12 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Each person applying for registration as a broker-dealer or investment adviser shall pay to the commissioner, or to any person designated by the commissioner in writing to collect such fee on **[**his behalf a**]** behalf of the commissioner, a nonrefundable fee of two hundred fifty dollars. **[**which shall not be refunded.**]**

(b) Each person applying for registration as an agent or investment adviser agent shall pay to the commissioner, or to any person designated by the commissioner to collect such fee on **[**his behalf a**]** behalf of the commissioner, a nonrefundable fee of fifty dollars. **[**which shall not be refunded.**]**

(c) Each registration issued pursuant to this section shall expire at the close of business on December thirty-first of [each calendar year unless renewed] the year of its issuance.

(d) [Each] (1) Except as provided in subdivision (2) of this subsection, each person registered as an agent or investment adviser agent, requesting transfer of [his] the registration of such agent or investment adviser agent to another registered broker-dealer or investment adviser, shall pay to the commissioner, or to any person designated by the commissioner in writing to collect such fee on [his] behalf of the commissioner, a fee of fifty dollars for each transfer requested.

(2) Each broker-dealer or investment adviser receiving a mass transfer shall pay to the commissioner, or to any person designated by the commissioner in writing to collect such fee on behalf of the commissioner, a fee of fifty dollars for each agent or investment adviser agent whose registration is transferred. For purposes of this subsection, "mass transfer" means a transfer of multiple agents of a broker-dealer or investment adviser agents of an investment adviser from a transferring broker-dealer or investment adviser to a receiving broker-dealer or investment adviser due to a cessation of business activity, succession, acquisition, merger, consolidation or other reorganization affecting the transferring broker-dealer or investment adviser.

(e) Each person [so] applying for registration under subsection (a) or (b) of this section, or both of said subsections, and any registrant applying for renewal of such registration under section 36b-13 shall pay the actual cost, as determined by the commissioner, of any reasonable investigation or examination made of such applicant or registrant by or on behalf of the commissioner.

Sec. 22. Subsection (a) of section 36b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) The commissioner may by order deny, suspend or revoke any registration or by order restrict or impose conditions on the securities or investment advisory activities that an applicant or registrant may perform in this state if **[**he**]** the commissioner finds that (1) **[**that**]** the order is in the public interest, and (2) **[**that**]** the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser: (A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; (B) has wilfully violated or wilfully failed to comply with any provision of sections 36b-2 to 36b-33, inclusive, or a predecessor statute or any regulation or order under said sections or a predecessor statute; (C) has been convicted, within the past ten years, of any misdemeanor involving a security, any aspect of the securities business, or any felony, provided any denial, suspension or revocation of such registration shall be in accordance with the provisions of section 46a-80; (D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business; (E) is the subject of a cease and desist order of the commissioner or an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser or investment adviser agent; (F) is the subject of any of the following sanctions that are currently effective or were imposed within the past **[**five**]** ten years: (i) An order issued by the securities administrator of any other state, Canadian province or territory, or by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending or revoking registration as a broker-dealer, agent, investment adviser, investment adviser agent or a person required to be registered under the Commodity Exchange Act, **[**as amended,**]** 7 USC 1 et seq., as from

time to time amended, and the rules and regulations thereunder, or the substantial equivalent of those terms as defined in sections 36b-2 to 36b-33, inclusive, (ii) an order of the Securities and Exchange Commission or Commodity Futures Trading Commission suspending or expelling [him] such applicant, registrant or person from a national securities or commodities exchange or national securities or commodities association registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act, [as amended,] 7 USC 1 et seq., as from time to time amended, or, in the case of an individual, an order of the Securities and Exchange Commission or an equivalent order of the commodity futures trading commission barring [the] such individual from association with a broker-dealer or an investment adviser, (iii) a suspension, expulsion or other sanction issued by a national securities exchange or other self-regulatory organization registered under federal laws administered by the Securities and Exchange Commission or the Commodity Futures Trading Commission if the effect of the sanction has not been stayed or overturned by appeal or otherwise, (iv) a United States Post Office fraud order, or (v) a cease and desist order entered by the Securities and Exchange Commission or the securities agency or administrator of [another] any other state or Canadian province or territory; but [(aa) the commissioner may not] the commissioner may not (I) institute a revocation or suspension proceeding under this subparagraph more than [one year] five years from the date of the sanction relied on, and [(bb) he may not] (II) enter an order under this subparagraph on the basis of an order under [another] any other state act unless that order was based on facts which would constitute a ground for an order under this section; (G) may [under federal law] be denied registration under federal law as a broker-dealer, agent, investment adviser, investment adviser agent or as a person required to be registered under the Commodity Exchange Act, as amended, 7 USC 1 et seq., and the rules and regulations promulgated thereunder, or the substantial equivalent of those terms as defined in sections 36b-2 to 36b-33, inclusive; (H) has engaged in fraudulent, dishonest or unethical practices in the securities or commodities business, including abusive

sales practices in the business dealings of such applicant, registrant or person with current or prospective customers or clients; (I) is insolvent, either in the sense that [his] the liabilities of such applicant, registrant or person exceed [his assets] the assets of such applicant, registrant or person, or in the sense that [he] such applicant, registrant or person cannot meet [his] the obligations of such applicant, registrant or person as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subparagraph without a finding of insolvency as to the broker-dealer or investment adviser; (J) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section; (K) has failed reasonably to supervise [his] the agents of such applicant or registrant if [he] the applicant, registrant or person is a broker-dealer or an agent charged with exercising supervisory authority on behalf of the broker-dealer, or [his] such applicant's or registrant's investment adviser agents if [he] the applicant or registrant is an investment adviser; (L) in connection with any investigation conducted pursuant to section 36b-26 or any examination under subsection (d) of section 36b-14, has made any material misrepresentation to the commissioner or upon request made by the commissioner, has withheld or concealed material information from, or refused to furnish material information to the commissioner, provided, there shall be a rebuttable presumption that any records, including, but not limited to, written, visual, audio, magnetic or electronic records, computer printouts and software, and any other documents, that are withheld or concealed from the commissioner in connection with any such investigation or examination are material, unless such presumption is rebutted by substantial evidence; or (M) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subparagraph, and [he] the commissioner shall vacate any such order when the deficiency has been corrected. The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to [him] the commissioner when the registration became effective unless the proceeding is instituted within one hundred eighty days of the

effective date of such registration.

Sec. 23. Section 36b-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) Whenever it appears to the commissioner after an investigation that any person or persons have violated, are violating or are about to violate any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that any person or persons have engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may in the commissioner's discretion order the person or persons or any other person that is, was or would be a cause of the violation of such sections or any such regulation, rule or order, due to an act or omission such other person knew or should have known would contribute to such violation, to cease and desist from the violations or the causing of the violations of the provisions of said sections or of the regulations, rules or orders thereunder, or from the further sale or offer to sell securities constituting or which would constitute a violation of the provisions of said sections or of the regulations, rules or orders thereunder, or from further engaging in such dishonest or unethical practice. After such an order is issued, the person or persons named **[**therein**]** in the order may, within fourteen days after receipt of the order, file a written request for a hearing. **[**Said**]** Any such hearing shall be held in accordance with the provisions of chapter 54.

(b) Whenever it appears to the commissioner, after an investigation, that any person or persons have violated any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections, or that the further sale or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, or that such person or persons have

engaged in a dishonest or unethical practice in the securities or commodities business within the meaning of sections 36b-31-15a to 36b-31-15d, inclusive, of the regulations of Connecticut state agencies, the commissioner may, in addition to any other remedy under this section, **[**(1)**]** order the person or persons to (1) make restitution of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice plus interest at the legal rate set forth in section 37-1, **[**and (2) order the person or persons to**]** (2) provide disgorgement of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation, rule or order or as a result of such dishonest or unethical practice, or (3) both make restitution and provide disgorgement. After such an order is issued, the person or persons named **[**therein**]** in the order may, within fourteen days after receipt of the order, file a written request for a hearing. **[**Said**]** Any such hearing shall be held in accordance with the provisions of chapter 54.

(c) The commissioner, in the commissioner's discretion, may order any person who directly or indirectly controls a person liable under subsection (b) of this section to make restitution, **[**or to**]** provide disgorgement, or both, of any sums shown to have been obtained as a result of a dishonest or unethical practice or in violation of any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections. Such controlling person shall be liable jointly and severally with and to the same extent as the person liable under subsection (b) of this section, unless such controlling person allegedly liable under this subsection sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist. After such an order is issued, the person or persons named **[**therein**]** in the order may, within fourteen days after receipt of the order, file a written request for a hearing. **[**Said**]** Any such hearing shall be held in accordance with the provisions of chapter 54. There shall be contribution as in cases of contract among the several persons so liable under this subsection.

(d) (1) Whenever the commissioner finds as the result of an investigation that any person or persons have violated any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections, the commissioner may send a notice to such person or persons by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. Any such notice shall include: (A) A reference to the title, chapter, regulation, rule or order alleged to have been violated; (B) a short and plain statement of the matter asserted or charged; (C) the maximum fine that may be imposed for such violation; and (D) the time and place for the hearing. **[**Such**]** Any such hearing shall be fixed for a date not earlier than fourteen days after the notice is mailed.

(2) The commissioner shall hold a hearing upon the charges made unless such person or persons fail to appear at the hearing. **[**Said**]** Any such hearing shall be held in accordance with the provisions of chapter 54. After the hearing if the commissioner finds that the person or persons have violated any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by said sections, order that a fine not exceeding **[**ten**]** one hundred thousand dollars per violation be imposed upon such person or persons. If such person or persons fail to appear at the hearing, the commissioner may, as the facts require, order that a fine not exceeding **[**ten**]** one hundred thousand dollars per violation be imposed upon such person or persons. The commissioner shall send a copy of any order issued pursuant to this subsection by registered mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to any person or persons named in such order.

(e) Whenever it appears to the commissioner that any person or persons have violated, are violating or are about to violate any of the provisions of sections 36b-2 to 36b-33, inclusive, or any regulation, rule or order adopted or issued under said sections, or that the further sale

or offer to sell securities would constitute a violation of said sections or any such regulation, rule or order, the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by this section: (1) Bring an action in the superior court for the judicial district of Hartford to enjoin the acts or practices and to enforce compliance with sections 36b-2 to 36b-33, inclusive, or any such regulation, rule or order. Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond; (2) seek a court order imposing a fine not to exceed **[**ten**]** one hundred thousand dollars per violation against any person found to have violated any order issued by the commissioner; or (3) apply to the superior court for the judicial district of Hartford for an order of restitution whereby the defendants in such action shall be ordered to make restitution of those sums shown by the commissioner to have been obtained by them in violation of any of the provisions of sections 36b-2 to 36b-33, inclusive, or any such regulation, rule or order, plus interest at the rate set forth in section 37-3a. Such restitution shall, at the option of the court, be payable to the receiver or conservator appointed pursuant to this subsection, or directly to the persons whose assets were obtained in violation of any provision of sections 36b-2 to 36b-33, inclusive, or any such regulation, rule or order.

(f) Any time after the issuance of an order or notice provided for in subsection (a), (b) or (c) or subdivision (1) of subsection (d) of this section, the commissioner may accept an agreement by any respondent named in such order or notice to enter into a written consent order in lieu of an adjudicative hearing. The acceptance of a consent order shall be within the complete discretion of the commissioner. The consent order provided for in this subsection shall contain (1) an express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the order or notice; (2) a provision that the order or notice may be used in construing the terms of the consent order; (3) a statement that the consent order shall become final when issued; (4) a

specific assurance that none of the violations or dishonest or unethical practices alleged in the order or notice shall occur in the future; (5) such other terms and conditions as are necessary to further the purposes and policies of sections 36b-2 to 36b-33, inclusive; (6) the signature of each of the individual respondents evidencing such respondent's consent; and (7) the signature of the commissioner or of the commissioner's authorized representative.

Sec. 24. Subsection (f) of section 36b-29 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(f) No person may bring an action under this section more than two years after the date of the contract of sale or of the contract for investment advisory services, except that (1) with respect to actions arising out of intentional misrepresentation or fraud in the purchase or sale of any interest in any limited partnership not required to be registered under the Securities Act of 1933, no person may bring an action more than one year from the date when the misrepresentation or fraud is discovered, except that no such action may be brought more than five years from the date of such misrepresentation or fraud, **[**provided, with respect to an action pending on July 1, 1993, that asserts facts upon which a claim could be asserted under this section on and after July 1, 1993, and which claim is asserted prior to January 1, 1994, no such action may be brought for intentional misrepresentation or fraud that occurred more than five years prior to the date of the filing of the complaint in such action,**]** and (2) with respect to actions arising out of intentional misrepresentation or fraud in the purchase or sale of securities other than securities described in subdivision (1) of this subsection, no person may bring an action more than one year from the date when the misrepresentation or fraud is discovered or in the exercise of reasonable care should have been discovered, except that no such action may be brought more than three years from the date of such misrepresentation or fraud.

Sec. 25. Subsection (d) of section 36a-448a of the general statutes is

repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(d) Each director, upon such director's election, shall take and subscribe to an oath or affirmation that the director (1) will diligently and honestly perform the duties of director in administering the affairs of the Connecticut credit union; (2) will remain responsible for the performance of the duties of director even if the director delegates the performance of such duties; and (3) will not knowingly or wilfully permit the violation of any law or regulation applicable to credit unions. Each such oath or affirmation shall be recorded in the minutes of the governing board, and the Connecticut credit union shall promptly file a copy of such minutes with the commissioner.

Sec. 26. Subdivision (1) of subsection (b) of section 36a-468a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) (1) The Commissioner of Banking shall not approve a merger pursuant to this section unless the Commissioner of Banking considers whether (A) the merging credit unions have engaged in any unsafe or unsound practice during the one-year period preceding the date on which the merger application is filed with the Commissioner of Banking; (B) the resulting credit union will be adequately capitalized; (C) the resulting credit union will have the managerial capability and the financial resources to serve the proposed membership; (D) the proposed merger will substantially lessen competition in the Connecticut credit union industry; **[**and**]** (E) the proposed merger will have a beneficial effect in meeting the convenience and needs of the proposed membership; and (F) the programs, policies and procedures of the merging credit unions or the resulting credit union relating to anti-money laundering activity are adequate, and the merging credit unions have a record of compliance with anti-money laundering laws and regulations.

Sec. 27. Subsection (e) of section 36a-468b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective*

October 1, 2003):

(e) The Commissioner of Banking shall approve a conversion under this section if the Commissioner of Banking determines that (1) the converting credit union has complied with the requirements of sections 36a-435a to 36a-472a, inclusive, and (2) the programs, policies and procedures of the converting credit union relating to anti-money laundering activity are adequate, and the converting credit union has a record of compliance with anti-money laundering laws and regulations.

Sec. 28. Subsection (b) of section 36a-469b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) When the Commissioner of Banking has been satisfied that all of the requirements of subsection (a) of this section, and all other requirements of sections 36a-435a to 36a-472a, inclusive, have been complied with, and the Commissioner of Banking determines that (1) the conversion would serve the economic needs of the proposed field of membership and is in accordance with sound credit union practices, (2) the converting credit union will have the managerial capacity and the financial resources to serve the proposed membership group, **[**and**]** (3) the converting credit union has adequate net worth to meet all applicable regulatory requirements, and (4) the programs, policies and procedures of the converting credit union relating to anti-money laundering activity are adequate, and the converting credit union has a record of compliance with anti-money laundering laws and regulations, the Commissioner of Banking shall (A) issue an approval of the conversion, which may contain such conditions as the Commissioner of Banking may require, and (B) issue a certificate of authority to engage in the business of a Connecticut credit union.

Sec. 29. Subsection (d) of section 36a-469c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(d) The Commissioner of Banking shall not approve the conversion unless the commissioner determines that: (1) The converting credit union has complied with all applicable provisions of law; (2) the converting credit union has equity capital at least equal to the minimum equity capital required for the organization of the type of mutual Connecticut bank to which it is converting; (3) the proposed conversion will serve the public necessity and convenience; (4) conditions in the locality in which the proposed mutual Connecticut bank will transact business afford reasonable promise of successful operation; **[**and**]** (5) the proposed directors and executive officers possess capacity and fitness for the duties and responsibilities with which they will be charged; and (6) the programs, policies and procedures of the converting credit union relating to anti-money laundering activity are adequate, and the converting credit union has a record of compliance with anti-money laundering laws and regulations. If the commissioner cannot make such determination with respect to any such proposed director or proposed executive officer, the commissioner may refuse to allow such proposed director or proposed executive officer to serve in such capacity in the proposed mutual Connecticut bank. As used in this subsection, "executive officer" means every officer of the proposed mutual Connecticut bank who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the proposed mutual Connecticut bank, regardless of whether such officer has an official title or whether such officer's title contains a designation of assistant or whether such officer serves without salary or other compensation. The vice president, the chief financial officer, secretary and treasurer of the proposed mutual Connecticut bank are presumed to be executive officers, unless, by resolution of the governing board or by the proposed mutual Connecticut bank's bylaws, any such officer is excluded from participation in major policy-making functions, other than in the capacity of a director of the proposed mutual Connecticut bank, and such officer does not actually participate in major policy-making functions.

Sec. 30. (NEW) (*Effective October 1, 2003*) Each director of a

Connecticut bank, upon such director's election, shall take and subscribe to an oath or affirmation that the director: (1) Will diligently and honestly perform the duties of director in administering the affairs of the Connecticut bank; (2) will remain responsible for the performance of the duties of director even if the director delegates the performance of such duties; and (3) will not knowingly or wilfully permit the violation of any law or regulation applicable to Connecticut banks. Each such oath or affirmation shall be recorded in the minutes of the Connecticut bank, and the Connecticut bank shall promptly file a copy of such minutes with the Commissioner of Banking.

Sec. 31. (NEW) (*Effective October 1, 2003*) Each Connecticut bank shall comply with the applicable provisions of the Currency and Foreign Transactions Reporting Act, 31 USC Section 5311 et seq., as from time to time amended, and any regulations adopted thereunder, as from time to time amended.

Sec. 32. (NEW) (*Effective October 1, 2003*) Each Connecticut credit union shall comply with the applicable provisions of the Currency and Foreign Transactions Reporting Act, 31 USC Section 5311 et seq., as from time to time amended, and any regulations adopted thereunder, as from time to time amended.

Sec. 33. (NEW) (*Effective October 1, 2003*) Each broker-dealer shall comply with the applicable provisions of the Currency and Foreign Transactions Reporting Act, 31 USC Section 5311 et seq., as from time to time amended, and any regulations adopted thereunder, as from time to time amended.

Sec. 34. (NEW) (*Effective October 1, 2003*) The Commissioner of Banking, in the commissioner's discretion and in accordance with section 29-17a of the general statutes, may arrange for the fingerprinting or for conducting any other method of positive identification required by the State Police Bureau of Investigation of each director of a Connecticut bank upon such director's re-election and each new officer of a Connecticut bank upon such officer's employment, to be used in conducting a criminal history records

check.

Sec. 35. (NEW) (*Effective October 1, 2003*) After the inception of an investigation by the state, or after reasonable knowledge by a person of the fact that a state investigation is likely to begin, no individual or publicly held corporation shall alter, falsify, destroy or conceal any record, document or tangible object for the purposes of impeding, obstructing or influencing an investigation by the state pertaining to publicly held securities.

Sec. 36. (NEW) (*Effective October 1, 2003*) (a) No publicly held corporation or officer, employee, contractor, subcontractor, or agent of a publicly held corporation may discharge, demote, suspend, threaten, harass, or in any manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct that the employee reasonably believes constitutes a violation of 18 USC Section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of federal or state law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by (A) a federal or state regulatory or law enforcement agency, (B) a member or committee of Congress or the General Assembly, or (C) a person with supervisory authority over the employee, or such other person working for the employer who has the authority to investigate, discover or terminate misconduct, or (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed, with any knowledge of the employer, relating to an alleged violation of 18 USC Section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of federal or state law relating to fraud against shareholders.

(b) An employee who alleges discharge or other discrimination by any person in violation of subsection (a) of this section may bring an action in the Superior Court for damages and injunctive relief against

such person, not later than one year after knowledge of the specific incident giving rise to such claim.

Sec. 37. (NEW) (*Effective October 1, 2003*) No accountant who conducts an audit of a publicly held corporation shall alter, destroy or conceal any documents sent, received or created in connection with such audit for a period of seven years after the end of the fiscal period in which the audit was concluded.

Sec. 38. (NEW) (*Effective October 1, 2003*) (a) Each publicly held corporation organized under the laws of this state or authorized to transact business in this state shall require its chief executive officer and chief financial officer to certify that the financial statements of the corporation fairly and accurately represent the financial condition of the corporation.

(b) (1) Any chief executive officer or chief financial officer under subsection (a) of this section who certifies a financial statement of the corporation knowing that the statement does not fairly and accurately represent the financial condition of the corporation shall be fined not more than one million dollars or imprisoned not more than ten years, or both.

(2) Any chief executive officer or chief financial officer under subsection (a) of this section who wilfully certifies a financial statement of the corporation knowing that the statement does not fairly and accurately represent the financial condition of the corporation shall be fined not more than five million dollars or imprisoned not more than twenty years, or both.

Sec. 39. (NEW) (*Effective October 1, 2003*) (a) It shall be unlawful for a registered public accounting firm to violate the provisions of Section 10a(g) of the Securities Exchange Act of 1934.

(b) Any registered public accounting firm that violates subsection (a) of this section shall be subject to the penalties that the State Board of Accountancy may impose under subsection (a) of section 20-281a of

the general statutes for conduct described in subdivision (10) of subsection (a) of section 20-281a of the general statutes.

Sec. 40. (NEW) (*Effective October 1, 2003*) (a) A violation of section 35 or 37 to 39, inclusive, of this act shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b of the general statutes.

(b) There shall exist a private cause of action pursuant to section 42-110g of the general statutes for injury sustained due to a violation of section 35 or 37 to 39, inclusive, of this act. Any person or entity seeking to pursue a private cause of action as provided in this subsection shall first obtain the written approval of the Commissioner of Consumer Protection.

Sec. 41. (NEW) (*Effective October 1, 2003*) A person is guilty of filing a fraudulent report if the person (1) knowingly or recklessly files a report, as defined in section 20-279b of the general statutes, which the person knows contains an untrue statement of a material fact, or (2) knowingly or recklessly omits a material fact in a report, as defined in section 20-279b of the general statutes.

Sec. 42. (*Effective from passage*) The State Board of Accountancy shall conduct a study and make recommendations for strengthening its oversight of licensees, as defined in section 20-279b of the general statutes, that audit publicly held corporations. The board shall submit a report on its findings and recommendations to the Governor and the General Assembly no later than January 1, 2004, in accordance with the provisions of section 11-4a of the general statutes.

Sec. 43. Subsection (a) of section 20-280 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) **[**On and after October 1, 1992, there**]** <u>There</u> shall be a State Board of Accountancy which shall consist of **[**seven**]** <u>nine</u> members, to be appointed by the Governor, all of whom shall be residents of this state,

[four**]** five of whom shall hold current, valid licenses to practice public accountancy and **[**three**]** four of whom shall be public members. Any persons serving on the board prior to October 1, 1992, shall continue to serve until a successor is appointed. Whenever an appointment of a licensee to the state board is to be made, the Connecticut Society of Certified Public Accountants shall submit to the Governor the names of five persons qualified for membership on the board and the Governor shall appoint one of such persons to said board, subject to the provisions of section 4-10. The Governor shall select a chairperson pursuant to section 4-9a. The term of each member of the board shall be coterminous with that of the Governor. Vacancies occurring during a term shall be filled by appointment by the Governor for the unexpired portion of the term. Upon the expiration of a member's term of office, such member shall continue to serve until his successor has been appointed. Any member of the board whose license under section 20-281d is revoked or suspended shall automatically cease to be a member of the board. No person who has served two successive complete terms shall be eligible for reappointment to the board. Appointment to fill an unexpired term shall not be considered to be a complete term. Any member who, without just cause, fails to attend fifty per cent of all meetings held during any calendar year shall not be eligible for reappointment.

Sec. 44. Subsection (b) of section 20-280b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) The board may, in its discretion, issue an appropriate order to any person found to be in violation of an applicable statute or regulation, providing for the immediate discontinuance of the violation. The board may, through the Attorney General, petition the superior court for the judicial district in which the violation occurred, or in which the person committing the violation resides or does business, for the enforcement of any order issued by it and for appropriate temporary relief or a restraining order and shall certify and file in the court a transcript of the entire record of the hearing or

hearings, including all testimony upon which such order was made and the findings and orders made by the board. The court may grant such relief by injunction or otherwise, including temporary relief, as it deems equitable and may make and enter a decree enforcing, modifying or enforcing as so modified, or setting aside, in whole or in part, any order of the board. The board, in its discretion, in lieu of or in addition to any other action authorized by law, may assess a civil penalty of up to **[**one**]** fifty thousand dollars against any person found to have violated any provision of the general statutes or any regulations adopted thereunder relating to the profession of public accountancy.

Sec. 45. Subsection (a) of section 20-281a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(a) After notice and hearing pursuant to section 20-280c, the board may revoke any certificate, license or permit issued under section 20-281c, 20-281d or 20-281e; suspend any such certificate, registration, license or permit or refuse to renew any such certificate, license or permit; reprimand, censure, or limit the scope of practice of any licensee; impose a civil penalty not exceeding **[**one**]** fifty thousand dollars upon licensees or others violating provisions of section 20-281g or place any licensee on probation, all with or without terms, conditions and limitations, for any one or more of the following reasons:

(1) Fraud or deceit in obtaining a certificate, registration, license or permit;

(2) Cancellation, revocation, suspension or refusal to renew authority to engage in the practice of public accountancy in any other state for any cause;

(3) Failure, on the part of a holder of a license or permit under section 20-281d or 20-281e, to maintain compliance with the requirements for issuance or renewal of such license or permit or to

report changes to the board under subsection (g) of section 20-281d or subsection (f) of section 20-281e;

(4) Revocation or suspension of the right to practice before any state or federal agency;

(5) Dishonesty, fraud or negligence in the practice of public accountancy or in the filing or failure to file his own income tax returns;

(6) Violation of any provision of sections 20-279b to 20-281m, inclusive, or regulation adopted by the board under said sections;

(7) Violation of any rule of professional conduct adopted by the board under subdivision (4) of subsection (g) of section 20-280;

(8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state, subject to the provisions of section 46a-80;

(9) Performance of any fraudulent act while holding a registration, certificate, license or permit issued under sections 20-279b to 20-281m, inclusive, or prior law;

(10) Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy; and

(11) Violation by anyone of any provision of section 20-281g.

Sec. 46. Subsection (c) of section 20-281k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(c) Nothing herein shall require a licensee to keep any workpaper beyond the period prescribed in any other applicable statute<u>, except that any workpaper prepared by a licensee in the course of an audit of a publicly held corporation shall be retained for seven years</u>.

Sec. 47. Subsection (b) of section 53a-160 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Commercial bribery is a class **[**A misdemeanor**]** D felony.

Sec. 48. Subsection (b) of section 53a-161 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Receiving a commercial bribe is a class **[**A misdemeanor**]** D felony.

Sec. 49. Subsection (b) of section 53a-147 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Bribery is a class **[**D**]** C felony.

Sec. 50. Subsection (b) of section 53a-148 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Bribe receiving is a class **[**D**]** C felony.

Sec. 51. Subsection (b) of section 53a-149 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Bribery of a witness is a class **[**D**]** C felony.

Sec. 52. Subsection (b) of section 53a-166 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Hindering prosecution in the second degree is a class **[**D**]** C felony.

Sec. 53. Subsection (b) of section 53a-167 of the general statutes is

repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Hindering prosecution in the third degree is a class **[**A misdemeanor**]** D felony.

Sec. 54. Subsection (b) of section 53a-150 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Bribe receiving by a witness is a class **[**D**]** C felony.

Sec. 55. Subsection (b) of section 53a-151 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2003*):

(b) Tampering with a witness is a class **[**D**]** C felony.

This act shall take effect as follows:	
Section 1	*October 1, 2003*
Sec. 2	*October 1, 2003*
Sec. 3	*October 1, 2003*
Sec. 4	*October 1, 2003*
Sec. 5	*October 1, 2003*
Sec. 6	*October 1, 2003*
Sec. 7	*October 1, 2003*
Sec. 8	*October 1, 2003*
Sec. 9	*October 1, 2003*
Sec. 10	*October 1, 2003*
Sec. 11	*October 1, 2003*
Sec. 12	*October 1, 2003*
Sec. 13	*October 1, 2003*
Sec. 14	*October 1, 2003*
Sec. 15	*October 1, 2003*
Sec. 16	*October 1, 2003*
Sec. 17	*October 1, 2003*
Sec. 18	*October 1, 2003*
Sec. 19	*October 1, 2003*
Sec. 20	*October 1, 2003*

Sec. 21	*October 1, 2003*
Sec. 22	*October 1, 2003*
Sec. 23	*October 1, 2003*
Sec. 24	*October 1, 2003*
Sec. 25	*October 1, 2003*
Sec. 26	*October 1, 2003*
Sec. 27	*October 1, 2003*
Sec. 28	*October 1, 2003*
Sec. 29	*October 1, 2003*
Sec. 30	*October 1, 2003*
Sec. 31	*October 1, 2003*
Sec. 32	*October 1, 2003*
Sec. 33	*October 1, 2003*
Sec. 34	*October 1, 2003*
Sec. 35	*October 1, 2003*
Sec. 36	*October 1, 2003*
Sec. 37	*October 1, 2003*
Sec. 38	*October 1, 2003*
Sec. 39	*October 1, 2003*
Sec. 40	*October 1, 2003*
Sec. 41	*October 1, 2003*
Sec. 42	*from passage*
Sec. 43	*October 1, 2003*
Sec. 44	*October 1, 2003*
Sec. 45	*October 1, 2003*
Sec. 46	*October 1, 2003*
Sec. 47	*October 1, 2003*
Sec. 48	*October 1, 2003*
Sec. 49	*October 1, 2003*
Sec. 50	*October 1, 2003*
Sec. 51	*October 1, 2003*
Sec. 52	*October 1, 2003*
Sec. 53	*October 1, 2003*
Sec. 54	*October 1, 2003*
Sec. 55	*October 1, 2003*

Statement of Legislative Commissioners:

In the second sentence of section 5, "counseling" was inserted for statutory consistency with the first sentence of said section; in the first sentence of section 18(b), the words "to be" were inserted after "to the

extent of the proceeds" for clarity; in the second sentence of section 18(b)(2), the word "financial" was inserted in the term "Substantial interdependence" for consistency with the preceding sentence; in the first sentence of section 18(c), "combined" was changed to "aggregated" for consistency with the first sentence of subsection (e) of the same section; in the second sentence of section 18(c), "section" was changed to "subsection" for accuracy, and in the first sentence of section 18(e), the phrase "with one another" was deleted for conciseness.

BA	*Joint Favorable Subst. C/R*	JUD
JUD	*Joint Favorable Subst.*	

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 $	FY 05 $
Banking Dept.; Judicial Dept.; Consumer Protection, Dept.	GF & BF - Revenue Gain	Potential Significant	Potential Significant
Correction, Dept.; Judicial Dept.; Criminal Justice, Div.; Parole, Bd. of	GF - Cost	Potential	Potential

Note: GF=General Fund; BF =Banking Fund

Municipal Impact: None

Explanation

The bill could result in a significant[1] revenue gain to the General Fund by:

1. establishing a criminal fine of up to $1 million or up to $5 million for a Chief Executive Officer (CEO) or Chief Financial Officer (CFO) who knowingly certifies a false corporation financial statement;

2. increasing the maximum criminal fine by $3,000 to $5,000 per offense for various bribery, witness tampering and hindering prosecution crimes (see Table 1).

3. expanding the activities for which the criminal fines for derogatory statements (under CGS 36a-55: up to $1,000 fine) and false statements or reports (under CGS 36a-56: up to $500 fine) would apply[2]; and

4. establishing the ability to impose civil penalties of up to $5,000 under the Connecticut Unfair Trade Practices Act

[1] OFA defines "Significant" as exceeding $100,000.

[2] No offenses or revenue from fines was recorded under these statutes in FY 02.

(CUTPA)[3] for certain violations involving state investigations, accountants, and certification of financial statements under the bill.

The bill could also result in a significant revenue gain to the Banking Fund by increasing various civil penalties from up to $7,500 or up to $10,000 depending on the violation to up to $100,000. In FY 02, the Department of Banking collected $343,000 in penalties.

The extent to which any of these fines and civil penalties would be imposed and collected is unknown. Any revenue impact from changes in fee revenue would be minimal.

Imprisonment Costs

In addition to the changes in financial penalties, the bill also expands imprisonment as a penalty. It establishes a penalty of imprisonment of up to 10 - 20 years for knowing certification of false corporation financial statements by CEOs and CFOs (Section 38), expands the activities under CGS 36a-54 - CGS 36a-56 for which imprisonment of up to one year or up to 10 years would apply depending on the violation, and expands the maximum penalties by 5 years for various other offenses (see Table 1).

Although the bill significantly expands criminal penalties, the number of offenses that may be affected by the bill is not anticipated to be numerous. Therefore, the annual cost for incarceration, probation and parole is not anticipated to be significant. However, since the lengths of potential imprisonment are expanded by up to 20 years in some cases, the cost over the long term, depending on the extent to which offenses occur and imprisonment is imposed could be significant. (See Table 2 for information on recent criminal activity for these offenses.)

[3] Under CUTPA, ,the Commissioner of Consumer Protection may order restitution in cases involving less than $5,000 and impose civil penalties of not more than $5,000 for each violation.

It is anticipated that the Division of Criminal Justice and the Department of Consumer Protection could handle each agency's respective duties under the bill within budgeted resources since staff can perform the increase in workload without the need for additional appropriations.

TABLE 1

Offense	Current Fine	Current Imprison.	Proposed Fine	Proposed Imprison.	Increase in Max. Fine	Increase in Max. Imprison
Bribery	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Bribe Receiving	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Bribery of a Witness	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Bribe Receiving by Witness	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Tampering with Witness	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Commercial Bribery	up to $2,000	up to 1 year	up to $5,000	1 - 5 years	3,000	5
Receiving Commercial Bribe	up to $2,000	up to 1 year	up to $5,000	1 - 5 years	3,000	5
Hinder Prosecution 2nd Degree	up to $5,000	1 - 5 years	up to $10,000	1 - 10 years	5,000	5
Hinder Prosecution 3rd Degree	up to $2,000	up to 1 year	up to $5,000	1 - 5 years	3,000	5

TABLE 2

Title	Offenses (FY 02)	Convictions (FY 02)	Not Guilty/ Dismissal (FY 02)	Incarcerated (on 4/1/03)
Bribery	5	1	4	2
Bribe Receiving	28	12	16	-
Bribery of a Witness	11	1	10	-
Bribe Receiving by Witness	2	2	-	-
Tampering with Witness	118	25	93	5
Commercial Bribery	1	1	-	-
Receiving Commercial Bribe	2	2	-	-
Hinder Prosecution 2nd Degree	39	13	26	4
Hinder Prosecution 3rd Degree	78	11	67	1
Total	284	68	216	12

OLR Bill Analysis
sSB 1035

AN ACT CONCERNING WHITE COLLAR CRIME ENFORCEMENT, THE CONNECTICUT UNIFORM SECURITIES ACT AND CORPORATE FRAUD ACCOUNTABILITY

SUMMARY:
This bill makes several changes to current banking and criminal laws to improve white-collar crime enforcement. It increases the fines for certain banking and accounting law violations and the offense level for certain white-collar crimes. The bill conditions financial institutions' ability to effect certain transactions in part on whether they have adequate anti-money laundering programs, policies, and procedures and a record of compliance with anti-money laundering laws and regulations. It contains provisions limiting a loan obligor's liabilities or imputing them to others.

The bill allows the banking commissioner to revoke, deny, suspend, restrict, or condition a broker-dealer or investment adviser applicant's registration or activities if he has engaged in fraudulent securities or commodities practices. It also permits the commissioner to order a person who violated the Uniform Securities Act, whose sale or offer to sell securities would violate the Uniform Securities Act, or who engaged in a dishonest or unethical practice in the securities or commodities business both to make restitution and to disgorge sums obtained by the violation or bad practice.

The bill creates whistleblower protections for employees who assist in investigations or proceedings regarding certain state and federal white-collar crime laws. It prohibits accountants from altering, destroying, or concealing documents for seven years after they complete a corporation's audit. And the bill deems a violation of its provisions regarding state investigations, accountants, and certification of financial statements to be an unfair or deceptive trade practice.

EFFECTIVE DATE: October 1, 2003, except for the section on the State Board of Accountancy report, which takes effect upon passage.

VIOLATIONS OF BANKING LAWS (§§ 1-3)

The bill increases from $7,500 to $100,000 per violation the civil penalty the banking commissioner may impose on someone who (1) the commissioner finds, after a hearing, has violated a banking law, regulation, rule, or order or (2) does not request a hearing on his violation within the time specified or fails to appear at the hearing. It also eliminates a provision allowing the commissioner to order a civil penalty up to $15,000 for each violation of the Connecticut Abusive Home Loan Lending Practices Act.

If the commissioner believes that a person has violated, is violating, or is about to violate a banking law, regulation, rule, or order, the law allows him to (1) bring an action in Hartford Superior Court to enjoin the act or practice, (2) seek a court order for a penalty, or (3) apply to the Hartford Superior Court for an order of restitution. The bill increases from $7,500 to $100,000 per violation the penalty that the commissioner may request from the court. It also specifies that the penalty may be imposed on anyone who violates a banking law, regulation, rule, or order, not just an order issued by the commissioner, as current law states.

The bill replaces the terms "officer, director, manager, or general partner," or combinations thereof, with "related person" for provisions addressing these parties' banking law violations. It defines a related person as a director, officer, employee, independent contractor, manager, or general partner. The bill also adds "Connecticut holding companies" to the list of financial institutions against whose employees the commissioner may take action for violating banking laws. It defines a Connecticut holding company as a holding company that holds a Connecticut bank as a subsidiary. The bill prohibits a related person who has been removed or suspended from office by an order because he violated banking laws from beginning or continuing as a related person of any bank, federal or state credit union, Banking Department licensee, or holding company while the order is in effect, without the commissioner's written consent.

The bill specifies that the resignation, termination of employment, or separation (including a separation caused by an institution closing) of any related person against whom the commission may issue an order does not affect the commissioner's authority to issue notice and proceed against the related person, as long as he sends notice within six years after the person's resignation, termination of employment, or

separation. It increases from $1,000 to $10,000 the maximum civil penalty the commissioner may impose for banking law violations. But the limit does not apply if the violation, breach, unsafe or unsound practice, or misuse of position (1) is part of a pattern of misconduct, (2) has caused or is likely to cause a material loss to a bank, Connecticut holding company, Connecticut or federal credit union, or credit union service organization, (3) will result or has resulted in a related person's pecuniary gain, (4) is a violation of provisions prohibiting false or misleading statements, false entries, statements, or reports, derogatory statements, or other prohibited activities of licensees; or (5) is a violation of the Connecticut Abusive Home Loan Lending Practices Act.

FALSE ENTRIES (§ 4)

The law requires imprisonment for up to 10 years if (1) a financial institution's officer, agent, or employee makes a false entry on the institution's collection or forwarding register or any other book; (2) a financial institution's officer, agent, or employee fails correctly to record on the institution's books a change in its assets or liabilities, with intent to deceive the commissioner or the institution's officers or auditors; or (3) any person, with intent to deceive, aids or abets an officer, agent, or employee in such a false entry or failure correctly to record. If the commissioner finds, as the result of an investigation, such a false entry, failure correctly to record, or aiding or abetting, the bill makes it a violation of banking laws and subject to the appropriate penalties and procedures (such as enforcement actions, civil penalties, suspension or revocation of licenses, and cease and desist orders).

DEROGATORY STATEMENTS (§ 5)

The law imposes a fine of up to $1,000, imprisonment for up to one year, or both, on a person who willfully and maliciously makes, circulates, or transmits derogatory statements affecting banks or credit unions, or who counsels, aids, or induces someone else in so doing. If the commissioner finds, as the result of an investigation, such making, circulating, transmitting, aiding, or inducing, the bill makes it a violation of banking laws and subject to the appropriate penalties and procedures.

FALSE STATEMENTS OR REPORTS (§ 6)

The law imposes a fine of up to $500, imprisonment for up to one year, or both on a person who knowingly makes a false statement or report, or willfully overvalues land, property, or security, with intent to defraud and to influence the action of a bank, out-of-state bank with a Connecticut branch, Connecticut credit union, small loan licensee, or first or secondary mortgage lender or broker licensee, in connection with an application, advance, commitment, loan, or extension of credit, and upon which the bank, credit union, or licensee relies in taking action. If the commissioner finds, as the result of an investigation, such a false statement or willful overvaluation, the bill makes it a violation of banking laws and subject to the appropriate penalties and procedures.

CRIMINAL HISTORY RECORDS CHECKS (§§ 7, 34)

The bill gives the commissioner the discretion to arrange for fingerprinting or any other method of positive identification the State Police Bureau of Investigation requires, to be used in conducting a criminal history records check for (1) each organizer and prospective initial director, in connection with an application to organize a Connecticut bank and (2) a Connecticut bank's directors, upon their re-election, and new officers.

ANTI-MONEY LAUNDERING ACTIVITIES (§§ 8-16, 26-29, 31-33)

Banks

The bill prohibits the commissioner from approving Connecticut banks' mergers or consolidations if the constituent banks' proposed or existing anti-money laundering activity programs, policies, and procedures are inadequate, or if the constituent banks lack a record of compliance with anti-money laundering laws and regulations. It also requires the commissioner to disapprove an offer, invitation, request, agreement, or acquisition of a bank or holding company's voting securities if the acquiring person's anti-money laundering programs, policies, and procedures are inadequate and he does not have a record of complying with anti-money laundering laws and regulations.

Sale of Assets

The bill prohibits the commissioner from approving (1) a Connecticut bank or credit union's sale of all or a significant part of its assets to a bank; (2) a Connecticut credit union's sale of all or a significant part of

its assets to a Connecticut or federal credit union; (3) a Connecticut bank's purchase of all or a significant part of the assets of a federal bank, federal credit union, or out-of-state credit union; or (4) a Connecticut credit union's purchase of all or a significant part of a federal credit union's assets if the purchasing institution's programs, policies, and procedures regarding anti-money laundering activities are inadequate, or it does not have a record of compliance with anti-money laundering laws and regulations.

Mutual Institutions and Capital Stock Banks

The bill requires the commissioner to approve the conversion of a mutual institution into another type of mutual institution, a mutual institution into a capital stock bank, a capital stock bank into another capital stock bank, or a capital stock institution into a mutual institution if (1) the converting institution meets existing conversion requirements and (2) the converting institution's programs, policies, and procedures relating to anti-money laundering activities are adequate, and it has a record of compliance with anti-money laundering laws and regulations.

Credit Unions

The bill prohibits the commissioner from approving a Connecticut credit union's merger with a Connecticut, federal, or out-of-state credit union without considering whether (1) the merging and resulting credit unions have adequate programs, policies, and procedures relating to anti-money laundering activity and (2) the merging credit unions have a record of complying with anti-money laundering laws and regulations. It requires the commissioner to approve a Connecticut credit union's conversion into a federal credit union if he determines that the converting credit union has adequate anti-money laundering activity programs, policies, and procedures, and that it has a record of compliance with anti-money laundering laws and regulations.

The bill also requires the commissioner to approve the conversion of a federal or out-of-state credit union into a Connecticut credit union and to issue a certificate of authority to operate as a Connecticut credit union if he finds that the converting credit union has (1) complied with the other conversion requirements; (2) adequate programs, policies, and procedures relating to anti-money laundering activities; and (3) a

record of compliance with anti-money laundering laws and regulations. And it prohibits the commissioner from approving a Connecticut or federal credit union's conversion into a mutual savings bank, mutual savings and loan association, or mutual community bank unless the converting credit union has (1) adequate anti-money laundering programs, policies, and procedures and (2) a record of complying with anti-money laundering laws and regulations.

Currency and Foreign Transactions Reporting Act

The bill requires all Connecticut banks, Connecticut credit unions, and broker-dealers to comply with the applicable provisions of the federal Currency and Foreign Transactions Reporting Act (31 USC 5311, et seq.).

LOAN POLICIES (§ 17)

The bill requires each Connecticut bank's governing board to adopt a loan policy, at least once a year, governing loans made under the banking loan statutes. It prohibits a Connecticut bank from making a secured or unsecured loan unless doing so is consistent with the policy. The policy must require written applications for all loans, and address (1) the categories and types of secured and unsecured loans the bank offers; (2) the manner in which loans will be made and approved; and (3) underwriting guidelines and collateral requirements. It must also address, in accordance with safety and soundness standards, (1) acceptable standards for title review, title insurance, and appraiser qualifications; (2) procedures for approving and selecting appraisers; (3) appraisal and evaluation standards; and (4) the bank's administration of the appraisal and evaluation process. The bill requires the loan policy and loans made pursuant to it to be subject to the commissioner's examination of safe and sound banking practices.

At least semiannually, the bill requires each Connecticut bank's governing board to review the loans the bank made under the banking loan statutes and include the results in the board's minutes. It also directs the board to cause the bank to use reasonable efforts to divest, as expeditiously as possible, any loan that the board determines is no longer prudent or consistent with the bank's loan policy.

LIMITATIONS ON OBLIGOR'S LIABILITIES (§18)

Partnership Liabilities

The bill eliminates a provision specifying that general partners' individual liabilities be included when computing a partnership's liabilities, and the partnership's liabilities be included when computing a general partner's individual liabilities. Instead, it contains new, broader provisions described below limiting an obligor's liabilities or imputing them to others.

Direct Benefit and Common Enterprise Tests

The bill directs one obligor's liabilities to be attributed to another person and each such person to be deemed an obligor when (1) the loan proceeds will be used for the other person's direct benefit, to the extent that the proceeds are to be so used or (2) a common enterprise is deemed to exist between the people. It considers loan proceeds to be used for another person's direct benefit, and attributable to that person, when the proceeds, or assets bought with the proceeds, are transferred to another person, except in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services. The bill aggregates separate obligors' liabilities and deems a common enterprise to exist when:

1. each obligor has the same expected source of repayment for the loan, and neither obligor has another source of income from which the liability, along with the obligor's other liabilities, can be fully repaid;

2. loans are made (A) to obligors who are related directly or indirectly through common control, including where one obligor directly or indirectly controls another and (B) substantial financial interdependence exists between or among the obligors;

3. separate people borrow from a Connecticut bank to obtain a business enterprise, of which they will own more than 50% of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the obligors for purposes of combining the acquisition loans; or

4. the commissioner determines, based on the facts and circumstances of particular transactions, that a common enterprise exists.

An employer will not be considered a source of repayment because of wages and salaries he pays to an employee unless the obligors are related through common control and "substantial financial interdependence" exists between or among them. Substantial financial interdependence exists when 50% or more of one obligor's annual gross receipts or expenditures come from transactions with the other obligor. Gross receipts and expenditures include gross revenues, expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

The bill prohibits loans to an obligor and its subsidiary, or to different subsidiaries of an obligor, from being aggregated unless either the direct benefit or common enterprise test is met. It defines a corporation or limited liability company as an obligor's subsidiary if the obligor owns or beneficially owns, directly or indirectly, more than 50% of the corporation or company's voting securities or voting interests.

The bill deems a loan to a partnership, joint venture, limited liability company, or association to be a loan to each member of that entity. But it exempts limited partners in limited partnerships and members of joint ventures, limited liability companies, or associations unless valid provisions of the partnership or membership agreement hold partners or members generally liable for the entity's debts or actions. The bill does not attribute members' or partners' loans to the partnership, joint venture, limited liability company, or association unless either the direct benefit or the common enterprise test is met. It considers both tests met between a partner or member and the entity when a loan is made to the partner or member to buy an interest in the partnership, joint venture, limited liability company, or association. But loans to partners or members will not be attributed to the entity's other members unless either test is met. (It is unclear which parties must meet the test.)

Loans to Foreign Governments

The bill requires loans to foreign governments and their agencies and instrumentalities to be aggregated only if the loans fail to meet either the means or purpose test at the time the loan is made. It considers the means test met if the obligor has resources or revenue of its own sufficient to meet its debt obligations. If the government's support,

excluding a central government's guarantees of the obligor's debt, is greater than the obligor's annual revenues from other sources, the bill presumes the means test has not been satisfied. The bill considers the purpose test met if the loan's purpose is consistent with the obligor's general business purposes. In order to show that the means and purpose tests have been satisfied, the bill requires a Connecticut bank to retain in its files at least the following items:

1. a statement, along with supporting documentation, describing the borrowing entity's legal status and degree of financial and operational autonomy;

2. the borrowing entity's financial statements for at least three years before the date the bank made the loan or extension of credit, or for each year the borrowing entity has been in existence, if less than three;

3. financial statements for each year the loan is outstanding;

4. the bank's assessment of the obligor's means of servicing the loan, including (A) specific reasons supporting the assessment; (B) an analysis of the obligor's financial history; (C) the obligor's present and projected economic and financial performance; and (D) the significance of any financial support third parties, including the obligor's central government, provide to the obligor; and

5. a loan agreement or other written statement from the obligor clearly describing the loan's purpose. (The written representation will usually satisfy the purpose test, but when at the time it disburses the funds, the bank knows or has reason to know of information suggesting the obligor will use the proceeds in a manner inconsistent with the written representation, the bank may not accept the representation without making further inquiry.)

INSIDER LOANS (§ 19)

Current law subjects Connecticut banks to federal regulations limiting insider loans and requires banks to comply with other federal regulations calling for public disclosure of insiders' indebtedness. The bill expands this provision to prohibit a Connecticut bank or its affiliates' executive officers, directors, or principal shareholders from knowingly receiving, or knowingly permitting any of that person's

related interests to receive, from a Connecticut bank, directly or indirectly, any extension of credit that violates the federal restrictions. It further prohibits an executive officer, director, employee, agent, or other person from participating in bank affairs that violate the federal restrictions.

UNIFORM SECURITIES ACT (§§ 20-23)

Registration

The bill prohibits anyone from transacting business in Connecticut as a broker-dealer or a broker-dealer's agent in breach of a currently effective sanction that would prohibit the person from effecting securities transactions in this state and that was imposed by (1) the federal Securities and Exchange Commission (SEC) or (2) a self-regulatory organization registered under federal law, administered by the SEC, of which the broker-dealer is a member. The bill eliminates a provision allowing an investment adviser registered with the SEC to file a notice and a nonrefundable $100 fee with the commissioner for each branch office in Connecticut instead of filing an application for branch office registration. Instead, it subjects these investment advisers to the current prohibition on broker-dealers and investment advisers transacting business within Connecticut unless they register each place of business as a branch office and pay a nonrefundable $100 fee. The bill also deletes a provision requiring an investment adviser registered with the SEC to notify the commissioner of its acquisition or relocation of any branch office in Connecticut in the same manner and at the same time as it notifies the SEC and to pay the commissioner a nonrefundable $100 fee. Instead, it subjects these investment advisers to the same notification and fee requirements as all other investment advisers and broker-dealers in Connecticut.

Fees

The bill specifies that investment adviser and broker-dealer registrations expire at the close of business on December 31 of the year they were issued. Current law states that these registrations expire on December 31 of each calendar year unless renewed. The bill requires broker-dealers and investment advisers receiving a "mass transfer" to pay the commissioner or his designee $50 for each agent or investment adviser agent whose registration is transferred. It defines a mass transfer as a transfer of one broker-dealer or investment adviser's agents to another broker-dealer or investment adviser due to the

transferring entity's cessation of business activity, succession, acquisition, merger, consolidation, or other reorganization.

Denial, Suspension, or Revocation of Registration

The bill increases from five to 10 years the look-back period for which the commissioner can revoke, deny, or suspend a registration, or by order restrict or impose conditions on an applicant or registrant's securities or investment advisory activities. Under current law, the commissioner can revoke, deny, suspend, restrict, or condition an applicant or registrant's registration or activities if he is the subject of certain state, federal, or international sanctions that are currently effective or were imposed within the past five years. One of the sanctions is a cease and desist order entered by the SEC or the securities administrator of another state or Canadian province, and current law prohibits the commissioner from instituting a revocation or suspension proceeding more than one year from the date of the sanction on which he is relying. The bill allows him to institute the proceeding for up to five years from the sanction date.

The bill allows the commissioner to revoke, deny, suspend, restrict, or condition an applicant's registration or activities if he has engaged in fraudulent securities or commodities practices, in addition to the dishonest or unethical practices for which he may already take action. The bill specifies that these fraudulent, dishonest, or unethical practices may include abusive sales practices in the applicant's, registrant's, or person's business dealings with current or prospective customers or clients.

Commissioner's Enforcement Powers

If the commissioner finds, on investigation, that (1) anyone has violated, is violating, or is about to violate a provision of the Uniform Securities Act; (2) a person's further sale or offer to sell securities would constitute a violation of the Uniform Securities Act; or (3) anyone has engaged in a dishonest or unethical practice in the securities or commodities business, current law allows the commissioner to order that person to cease and desist from the violations, further sales or offers to sell, or further dishonest or unethical practice. If any other person is, was, or would be the cause of a violation of the Uniform Securities Act due to an act or omission the person knew or should have known would contribute to the

violation, the bill allows the commissioner to order him to cease and desist from causing such violations.

The bill allows the commissioner to order a person, or someone who directly or indirectly controls a person, who has engaged in one of the three types of violations listed above both to make restitution and to disgorge sums obtained by the violation or bad practice. Current law allows the commissioner to order one or the other, but not both.

The law requires the commissioner to hold a hearing when, as the result of an investigation, he charges a person with violating the Uniform Securities Act, unless the person fails to appear at the hearing. The bill increases from $10,000 to $100,000 the maximum fine the commissioner may impose if (1) he finds after the hearing that the person violated the Uniform Securities Act or (2) the person fails to appear at the hearing. It also increases from $10,000 to $100,000 per violation the court order that the commissioner may seek against anyone found to have violated the commissioner's orders.

CREDIT UNION GOVERNING BOARDS (§ 25)

The law requires Connecticut credit union directors to take and subscribe to an oath or affirmation regarding their duties and responsibilities. The bill specifies that (1) each director must take or subscribe to the oath or affirmation upon election, (2) the oath or affirmation must be recorded in the governing board's minutes, and (3) the credit union must promptly file a copy of the minutes with the commissioner.

BANK DIRECTORS' OATH (§ 30)

The bill requires each Connecticut bank director, upon election, to take and subscribe to an oath or affirmation that the director will (1) diligently and honestly perform his duties in administering the bank's affairs; (2) remain responsible for the performance of his duties, even if he delegates them; and (3) not knowingly or willfully permit the violation of a law or regulation applicable to Connecticut banks. The oath or affirmation must be recorded in the bank's minutes, and the bank must promptly file a copy of the minutes with the commissioner.

STATE INVESTIGATIONS (§ 35)

The bill prohibits individuals and publicly held corporations from altering, falsifying, destroying, or concealing any record, document, or tangible object in order to impede, obstruct, or influence a state investigation relating to publicly held securities after a state investigation has begun, or after they have reasonable knowledge that a state investigation is likely to begin.

WHISTLEBLOWER PROTECTION (§ 36)

The bill prohibits a publicly held corporation or its officers, employees, contractors, subcontractors, or agents from discharging, demoting, suspending, threatening, harassing, or discriminating against an employee in the terms and conditions of employment because of the employee's lawful act to (1) provide information, cause information to be provided, or otherwise assist in an investigation involving conduct the employee reasonably believes violates federal laws prohibiting frauds and swindles by mail, fraud by wire, radio, or television, bank fraud, or securities fraud, any SEC rule or regulation, or any federal or state law regarding fraud against shareholders, when the information or assistance is provided to, or the investigation conducted by, (A) a federal or state regulatory or law enforcement agency; (B) a member or committee of Congress or the General Assembly; or (C) a person with supervisory authority over the employee, or another person working for the employer with the authority to investigate, discover, or terminate misconduct or (2) file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed, with the employer's knowledge, relating to an alleged violation of federal laws prohibiting frauds and swindles by mail; fraud by wire, radio, or television; bank fraud; or securities fraud; any SEC rule or regulation; or any federal or state law regarding fraud against shareholders.

The bill allows an employee alleging discharge or other discrimination in violation of the whistleblower protection to bring an action for damages and injunctive relief against the violator in Superior Court for up to one year after knowledge of the specific incident giving rise to the claim.

ACCOUNTANTS (§§ 37, 39, 46)

The bill prohibits an accountant conducting an audit for a publicly held corporation from altering, destroying, or concealing any documents sent, received, or created in connection with the audit for

seven years after the end of the fiscal year in which the audit concluded. It also requires accounting licensees to keep for seven years work papers they prepare in the course of auditing a publicly held corporation.

The bill prohibits a registered public accounting firm from violating a federal law restricting the activities accounting firms may perform for a securities issuer while they are conducting the issuer's audit. If a firm performs these activities while conducting the audit, the bill subjects it to State Board of Accountancy penalties for conduct reflecting adversely on a licensee's fitness as a public account, such as revocation, suspension, or refusal to renew a certificate, license, or permit or imposition of a civil penalty. The bill increases the maximum civil penalty the board may impose from $1,000 to $50,000.

CERTIFICATION OF FINANCIAL STATEMENTS (§ 38)

The bill requires each publicly held corporation organized under Connecticut laws or authorized to transact business in Connecticut to direct its chief executive officer (CEO) and chief financial officer (CFO) to certify (it is unclear to whom) that the corporation's financial statements fairly and accurately represent the corporation's financial condition. It allows a CEO or CFO who certifies the corporation's financial statement knowing that the statement does not fairly and accurately represent the corporation's financial condition to be fined up to $1 million or imprisoned up to 10 years, or both. It allows a CEO or CFO who willfully certifies the corporation's financial statement knowing that the statement does not fairly and accurately represent the corporation's financial condition to be fined up to $5 million or imprisoned up to 20 years, or both. (It is unclear what difference, if any, exists between knowing certification and willful, knowing certification.)

UNFAIR AND DECEPTIVE TRADE PRACTICES (§ 40)

The bill deems a violation of its provisions regarding state investigations, accountants, and certification of financial statements to be an unfair or deceptive trade practice. It identifies a private cause of action in the Connecticut Unfair Trade Practices Act (CUTPA) for a person or entity that suffers a loss due to such unfair or deceptive trade practices, and allows a court to award actual and punitive damages and equitable relief. The bill requires any person or entity

seeking to pursue a private cause of action first to obtain the consumer protection commissioner's written approval.

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. Individuals can also bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

FRAUDULENT REPORT (§ 41)

The bill considers a person guilty of filing a fraudulent report if he knowingly or recklessly (1) files an accounting report that the person knows contains a false statement of material fact or (2) omits a material fact on an accounting report.

STATE BOARD OF ACCOUNTANCY (§§ 42-45)

The bill requires the State Board of Accountancy to conduct a study and recommend ways to strengthen its oversight of public accountant licensees who audit publicly held corporations. The board must submit a report on its findings and recommendations to the governor and the General Assembly by January 1, 2004. The bill increases the board's size from seven to nine members, the number of members who must hold current, valid licenses to practice public accountancy from four to five, and the number of public members from three to four.

The bill increases from $1,000 to $50,000 the maximum civil penalty the board may impose on a person found to have violated a public accountancy law or regulation. It also increases from $1,000 to $50,000 the maximum civil penalty the board may impose on a person who, without a valid license and permit, issues a report on another person, firm, organization, or governmental unit's financial statements.

PENAL CODE RECLASSIFICATION (§§ 47 – 55)

The bill reclassifies several white-collar crimes to increase the level of offense, as shown in Table 1.

Table 1. Penal Code Reclassification for White-Collar Crimes

Criminal Offense	**Current Classification**	**Proposed Reclassification**
Commercial bribery	Class A misdemeanor	Class D felony
Receiving a commercial bribe	Class A misdemeanor	Class D felony
Bribery	Class D felony	Class C felony
Bribe receiving	Class D felony	Class C felony
Bribery of a witness	Class D felony	Class C felony
Hindering prosecution in the second degree	Class D felony	Class C felony
Hindering prosecution in the third degree	Class A misdemeanor	Class D felony
Bribe receiving by a witness	Class D felony	Class C felony
Tampering with a witness	Class D felony	Class C felony

A class A misdemeanor is punishable by up to one year in prison, a fine up to $2,000, or both. A class D felony is punishable by one to five years in prison, a fine up to $5,000, or both. A class C felony is punishable by one to 10 years in prison, a fine up to $10,000, or both.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute Change of Reference
Yea 19 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 41 Nay 0